

UNITED STATES DISTRICT COURT?  
SOUTHERN DISTRICT OF NEW YORK

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CYPRESS HOLDINGS, III, L.P., individually  
and derivatively on behalf of SPORT-BLX,  
INC.,

Plaintiff,

-V-

Civil Action No.:  
1:22-cv-1243-LGS

GEORGE HALL, JOSEPH DE PERIO, DANIEL  
STRAUSS, FRANCIS RUCHALSKI, CESAR BAEZ,  
CHRISTOPHER JOHNSON, SPORT-BLX INC.,  
SPORT-BLX SECURITIES, INC., CLINTON GROUP  
INC., AND GLASSBRIDGE ENTERPRISES INC.,  
Defendants.

-----X  
SPORT-BLX, INC., individually and  
derivatively on behalf of its shareholders,

Plaintiff,

-V-

Case No.:  
1:22-cv-8111-LGS

MICHAEL M. SALERNO, CYPRESS HOLDINGS, III,  
L.P.,

Defendants.

-----X

DATE: May 1, 2023  
TIME: 9:43 A.M.

EXAMINATION BEFORE TRIAL of the  
Defendant, Michael Salerno, taken by Mr.  
Sack, pursuant to Order, held at the  
offices of Hindy Freilich, a Notary Public  
of the State of New York.

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A P P E A R A N C E S:

MORVILLO ABRAMOWITZ GRAND IASON & ANELLO  
ATTORNEYS FOR SPORT-BLX AND GEORGE HALL  
565 Fifth Avenue  
New York, NY 10017  
BY: JONATHAN S. SACK, ESQ.  
EDWARD M. SPIRO, ESQ  
JOSEPH STERN, ESQ  
ALEXANDER MALETIS - paralegal

CHIESA SHAHINIAN & GIANTOMASI PC  
ATTORNEYS FOR CYPRESS HOLDINGS, III, L.P.,  
MICHAEL M. SALERNO  
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LOEB AND LOEB LLP  
ATTORNEYS FOR GLASSBRIDGE ENTERPRISES INC., AND  
DANIEL STRAUSS AND FRANCIS RUCHALSKI  
345 Park Avenue  
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BY: CHRISTIAN D. CARBONE, ESQ.

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1325 6th Avenue - 19th floor  
New York, NY 10019  
BY: DAVID GOLD, ESQ  
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ALSO PRESENT:  
Videographer - Peter Van der Vlugt  
(virtually)  
Joseph De Perio

221. UNIFORM RULES FOR THE  
CONDUCT OF DEPOSITIONS

221.1 Objections at Depositions

(a) Objections in general. No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) Speaking objections restricted. Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent, and at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination, persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made. A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to

221. UNIFORM RULES FOR THE  
CONDUCT OF DEPOSITIONS

221.3 Communication with the  
Deponent. An attorney shall not interrupt  
the deposition for the purpose of  
communicating with the deponent unless all  
parties consent or the communication is  
made for the purpose of determining whether  
the question should not be answered on the  
grounds set forth in section 221.2 of these  
rules, and in such event, the reason for  
the communication shall be stated for the  
record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED  
that the transcript may be signed before  
any Notary Public with the same force and  
effect as if signed before a clerk or a  
judge of the court.

IT IS FURTHER STIPULATED AND AGREED  
that the examination before trial may be  
utilized for all purposes as provided by  
the CPLR.

IT IS FURTHER STIPULATED AND AGREED  
that all rights provided to all parties by  
the CPLR cannot be deemed waived and the  
appropriate sections of the CPLR shall be  
controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED  
by and between the attorneys for the  
respective parties hereto that a copy of  
this examination shall be furnished,  
without charge, to the attorneys  
representing the witness testifying herein.

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VIDEOGRAPHER: We are now on the record. This begins videotape number 1 in the deposition of Michael M Salerno in the matter of Cypress Holdings, III, L.P. versus Sport-BLX, Inc. Today is Monday, May 1, 2023, and the time is 9:43 a.m. This deposition is being taken virtually at the request of Morvillo Abramowitz Grand Iason & Anello.

The videographer is Peter Vander Vlugt of Magna Legal Services, and the court reporter is Hindy Freilich of Magna Legal Services.

Will counsel and all parties present state their appearances and whom they represent.

MR. SACK: I'm Jonathan Sack, and along with colleagues who will introduce themselves, we represent Sport-BLX and individuals associated with Sport-BLX.

MR. SPIRO: Ed Spiro, also from

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Morvillo Abramowitz, representing

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Sport-BLX and the individuals

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associated with them.

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MR. STERN: Joseph Stern, also

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with Morvillo Abramowitz, and also

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representing Sport-BLX and associated

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individuals.

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MR. SACK: And we have

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Alexander Maletis, who is a legal

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assistant in our office, with us as

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well.

13

MR. PEARLSON: Ross Pearlson,

14

P-E-A-R-L-S-O-N, of Chiesa Shahinian

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& Giantomasi, representing Cypress

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and the witness, Michael Salerno.

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Appearing with me is Kelly Kortes,

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one of our associates. And appearing

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by video is -- and by Zoom, I should

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say, is Dan Tyrrell.

21

MR. GOLD: David Gold, Cole

22

Schotz PC, on behalf of Joseph De

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Perio, and I'm joined with

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Mr. De Perio.

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MR. CARBONE: Chris Carbone,

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Loeb and Loeb, here for Glassbridge  
and the individual defendants, Daniel  
Strauss and Frank Ruchalski.

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VIDEOGRAPHER: Will the court  
reporter please swear in the witness.

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M I C H A E L S A L E R N O, called as a

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witness, having been first duly sworn by a

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Notary Public of the State of New York, was

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examined and testified as follows:

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EXAMINATION BY

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MR. SACK:

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Q. Mr. Salerno, as you heard, my

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colleagues and I represent Sport-BLX,

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George Hall and other individuals

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associated with Sport-BLX in the

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consolidated litigations in this case.

19

For this deposition, your

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counsel is permitted to object to a

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question, but generally, you must answer

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the question even if there's an objection.

23

If there's a concern with respect to

24

attorney/client privilege, you may

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reasonably consult with your attorney on

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2 that.

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I will try to ask clear  
4 questions. If anything is not clear,  
5 please let me know and I'll seek to clarify  
6 it. If you don't say anything, if you  
7 don't ask to clarify a question, then I'll  
8 just operate on the premise that my  
9 question is clear.

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Do you understand that?

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A. Yes.

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Q. I'll just confirm for all of us  
13 here that the deposition is subject to a  
14 protective order that's been entered into  
15 and agreed to by all the parties to this  
16 case. That protective order provides for  
17 various confidentiality protections. Do  
18 you understand that, Mr. Salerno?

19

A. Yes.

20

MR. PEARLSON: John, I would  
21 ask that the entire deposition be  
22 designated confidential until we can  
23 review it and give you specific  
24 confidentiality designations.

25

MR. SACK: That's agreeable.



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And any objections to that?

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MR. CARBONE: No.

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MR. SPIRO: I think the

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protective order already provides for

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that.

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Q. Okay. Mr. Salerno, is there

8

anything prohibiting you from giving

9

accurate and truthful testimony today?

10

A. No.

11

Q. Are you on any medication, for

12

example, that might affect your testimony?

13

A. No.

14

Q. What have you done to prepare

15

for today's deposition?

16

A. I met with counsel, and I

17

looked over some documents that they

18

provided to me.

19

Q. When did you meet with counsel?

20

A. Last week.

21

Q. For how long?

22

A. About two hours.

23

Q. And how many documents did you

24

look at?

25

A. I'm not sure.

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2 Q. Did they refresh your  
3 recollection about the events in this  
4 litigation?

5 A. Yes, particular to the document  
6 I looked at.

7 Q. What was that document?

8 A. There were a bunch. I'm not  
9 sure.

10 Q. What is NPPG plan  
11 professionals?

12 A. That is my company.

13 Q. You own the company?

14 A. I do.

15 Q. You control the company?

16 A. I do.

17 Q. What does it do?

18 A. It performs employee benefit  
19 services, as well as retirement plan  
20 services.

21 Q. Works on estate plans for  
22 people?

23 A. I'm sorry?

24 Q. It works on estate plans for  
25 people?

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2           A.       Can you clarify estate or a  
3   state?

4           Q.       Estate?

5           A.       As in -- can you clarify?

6           Q.       Yeah. Does the NPPG plan  
7   professionals work on estate planning?

8           A.       No.

9           Q.       So when you say it handles  
10   retirement plans, can you expand on that a  
11   little bit?

12          A.       We handle compliance work. We  
13   perform testing. We do compliance 5500  
14   preparation. And we help design and manage  
15   the plan document.

16          Q.       It's administration of plans,  
17   is that right?

18          A.       That's correct. We also do  
19   some investment advisory work.

20          Q.       And so you are a registered --  
21   NPPG plan professionals is a registered  
22   investment advisor?

23          A.       It is.

24          Q.       And what sort of investment  
25   advisory work does it do?

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2           A.       It does institutional fiduciary  
3 oversight.

4           Q.       What does that mean?

5           A.       It oversees investments that  
6 would be appropriate for a retirement plan.

7           Q.       And what is NPPG Investment  
8 Services, LLC?

9           A.       That was a state registered  
10 investment advisory firm.

11          Q.       What kind of investment  
12 advisory work does NPPG Investment Services  
13 do?

14          A.       It oversees the investments  
15 that would be inside of a retirement plan.

16          Q.       You said before investments  
17 appropriate for a retirement plan. What  
18 does that mean, investments appropriate for  
19 a retirement plan?

20          A.       It means that it would be an  
21 investment that would be considered  
22 appropriate for a retirement plan.

23          Q.       Could you give some examples of  
24 what would be an appropriate investment for  
25 a retirement plan and what would be an

1

2 inappropriate investment?

3 A. An appropriate investment would  
4 be an index stock fund.

5 Q. And what would an inappropriate  
6 investment be?

7 A. An example could be -- I'm not  
8 really sure. Well, that's not true. A  
9 private placement into a horse. If you  
10 buy, you know, a speculative investment  
11 into a horse, that would not be appropriate  
12 to put in your retirement plan for  
13 employees to select from.

14 Q. How about a speculative private  
15 investment not in a horse, would that be  
16 inappropriate for a retirement plan?

17 A. No. That may be appropriate.

18 Q. So it would depend on what the  
19 investment was, is that right?

20 A. Not just that. It also depends  
21 on the investment policy statement that the  
22 plan sponsor provides.

23 Q. You picked the example of a  
24 horse for an inappropriate private  
25 investment. Could you think of some other

1  
2 examples of what would be an inappropriate  
3 private investment for a retirement plan?

4 A. No.

5 Q. None, not as -- you're an  
6 investment advisor and you can't think of  
7 any other --

8 MR. PEARLSON: Objection.

9 MR. SACK: Let me finish my  
10 question.

11 Q. You're an investment advisor  
12 and you can't think of any other example,  
13 other than a horse, for an inappropriate  
14 investment?

15 A. If you provided me an  
16 investment policy statement, I would be  
17 able to. But you're not doing that.

18 Q. What was your position with  
19 NPPG Investment Services?

20 A. I'm the owner.

21 Q. And you controlled its  
22 activities, as well?

23 A. Yes.

24 Q. And that was a registered  
25 investment advisor, as well?

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2           A.       State. Yes. State of New  
3   Jersey.

4           Q.       And are they both registered  
5   investment advisors? Are they both,  
6   meaning plan professionals and investment  
7   services?

8           A.       I don't understand the  
9   question.

10          Q.       Did you file a form ADV for  
11   each of those entities?

12          A.       I did not, but our counsel did.

13          Q.       What's a form ADV?

14          A.       In my opinion, it's a  
15   disclosure form.

16          Q.       To whom?

17          A.       The public.

18          Q.       And to the SEC?

19          A.       Not necessarily.

20          Q.       Who filed the forms -- in other  
21   words, possibly to the SEC, you're not  
22   sure, is that what you're saying?

23          A.       No. I'm saying in estate  
24   registration, we wouldn't file with the  
25   SEC.

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2 Q. But in a -- if it's more than a  
3 state registration, you would file with the  
4 SEC?

5 MR. PEARLSON: Objection to  
6 form.

7 A. What do you mean, "more"?

8 Q. Why don't we break it down.

9 For NPPG plan professionals,  
10 was a form ADV filed?

11 A. Yes.

12 Q. With whom?

13 A. The SEC.

14 Q. Why with the SEC?

15 A. Because it was a registration  
16 application with the SEC.

17 Q. And with investment services,  
18 who is the form ADV filed with?

19 A. The state of New Jersey.

20 Q. And who filed those forms?

21 A. I don't recall who filed NPPG  
22 Investment Services. RIA Lawyers filed it  
23 for NPPG plan professionals.

24 Q. And who are they?

25 A. Our counsel.



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2 Q. Who?

3 A. Gentleman's name is Ryan, Ryan

4 Walker -- Walter.

5 Q. At what firm?

6 A. RIA Lawyers.

7 Q. I'm going to show you a form  
8 NPPG Investment Services, form ADV. We'll  
9 have them distribute it.

10 MR. PEARLSON: What are you  
11 going to mark this as, John?

12 MR. SACK: We'll call it  
13 Exhibit 1. Salerno Exhibit --  
14 Salerno Deposition Exhibit 1.

15 Q. Feel free to look through the  
16 document, Mr. Salerno, but I'm going to  
17 direct you initially to the last two pages.  
18 It's a 24-page document, and we'll navigate  
19 through the document as well as we can.  
20 Please take a look at the last two pages,  
21 initially. And then I'm going to direct  
22 you to --

23 A. Do you have a pair of reading  
24 glasses by any chance? I don't have them.

25 Q. I don't. You didn't bring

1

2 reading glasses to a deposition,

3 Mr. Salerno?

4 A. No. I forgot them.

5 MR. CARBONE: These are

6 prescription, but they're reading

7 glasses, if you want to try them out.

8 I'll share. You can try them on.

9 Q. Well, let's do the best we can.

10 If we have to take a break, we'll just take

11 a break for you to get some.

12 On page 23, under -- in the box

13 that's headed domestic investment advisors

14 execution page, do you see your name

15 indicated there with your CRD number and

16 the date of March 31, 2023?

17 A. I don't see a page number.

18 Q. I understand. It's the next to

19 last page of the document.

20 A. Okay. I'm here.

21 Q. Yes.

22 MR. PEARLSON: At the bottom of

23 the box.

24 A. Yes. I see my name.

25 Q. And were you involved in any

1

2 way with the preparation and filing of this  
3 document?

4 A. I'm sure I was.

5 Q. How so? How were you involved?

6 A. Counsel, at the time, would  
7 have probably asked me questions. I don't  
8 recall them.

9 Q. Well, at the time, this was  
10 filed on or about March 31, 2023. That was  
11 just about one month ago.

12 A. Oh. This was an update. Okay.  
13 I'm sorry. I thought this was the initial,  
14 you said.

15 Q. This was the one filed with the  
16 SEC on March 31, 2023. Were you involved  
17 in the preparation of this document?

18 A. Not much. No.

19 Q. Well, at all, were you -- did  
20 you speak with your lawyer?

21 A. Yes.

22 Q. Did you provide your lawyer  
23 information that went into this document?

24 A. I did not.

25 Q. Did he ask you questions about

1

2 the document?

3 A. He did not.

4 Q. Did you review the document  
5 before it went to the SEC?

6 A. This did not go to the SEC.

7 Q. It was filed with the SEC. We  
8 got it off of the SEC website.

9 A. This is a state registration.

10 Q. Well, we can argue about that  
11 separately. But this was filed with a  
12 public authority. Did you review it before  
13 it was -- it went to that authority?

14 A. Briefly, yes.

15 Q. And did you review it for  
16 accuracy?

17 A. I relied on counsel for the  
18 accuracy.

19 Q. So what did you review it for?

20 A. Completeness.

21 Q. Let me direct you to -- and you  
22 see also -- do you see, Mr. Salerno, on the  
23 page you're on, it's for a domestic  
24 investment advisor execution page. Under  
25 the signature it says, "I, undersigned,

1  
2 sign this form ADV on behalf of and with  
3 the authority of the investment advisor.  
4 The investment advisor and I both certify  
5 under penalty of perjury under the laws of  
6 the United States of America that the  
7 information and statements made in the ADV,  
8 including exhibits and any other  
9 information submitted, are true and  
10 correct."

11 So do you see that statements  
12 are being made here to the United States of  
13 America? Do you see that?

14 A. I see that it's -- I wouldn't  
15 phrase it that way.

16 MR. PEARLSON: Yeah, I would  
17 object to that. That isn't what it  
18 says.

19 A. That's not what it says. I see  
20 the paragraph.

21 Q. There's a box there on 23 for  
22 domestic investment advisor execution page.  
23 Turn to the last page, Mr. Salerno. Do you  
24 see there's also a separate box like that  
25 for state registered investment advisor

1  
2 execution page, and you have a separate set  
3 of certifications of accuracy there, as  
4 well, is that right?

5 A. Yes.

6 Q. Also on March 31, 2023?

7 A. Yes.

8 Q. If you could go to the second  
9 page from the back.

10 MR. PEARLSON: The one we were  
11 just on?

12 MR. SACK: We're still on the  
13 same document. The one before the  
14 two pages we just looked at.

15 MR. PEARLSON: Which page?  
16 Second to last page or the third to  
17 last page?

18 MR. SACK: Third to last page.  
19 Thank you.

20 Q. Do you see an answer -- do you  
21 see a question and a set of answers there  
22 under custody, and it says number 2, pooled  
23 investment vehicles and trusts. Do you --  
24 at A 1, "Do you or a related person act as  
25 a general partner, managing member or

1  
2 person serving in a similar capacity for  
3 any pooled investment vehicle for which you  
4 are the advisor to the pooled investment  
5 vehicle or for which you are the advisor to  
6 one or more of the investors in the pooled  
7 investment vehicle."

8 And do you see the response to  
9 that question is yes?

10 A. I do see that.

11 Q. What's a pooled investment  
12 vehicle?

13 A. In this context, I would have  
14 to ask our counsel, who completed it.

15 Q. But you're responsible for the  
16 accuracy of the information. You don't  
17 know what a pooled investment vehicle is?

18 A. In this context, I would have  
19 to ask him.

20 Q. Well, in any context, as a  
21 registered investment advisor, what's your  
22 understanding of what a pooled investment  
23 vehicle is?

24 A. As a registered investment  
25 advisor, my understanding of a pooled

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2 investment would be the grouping of  
3 multiple investments under one omnibus  
4 account.

5 Q. And would it also be a grouping  
6 of multiple investors in one vehicle or one  
7 partnership or one investment agreement?

8 A. In general or in this context?

9 Q. In any context? Is that an  
10 accurate -- if multiple investors invest in  
11 a partnership, would that be a pooled  
12 investment vehicle?

13 A. I'm not sure if it would be in  
14 this context. It might be. But I don't --  
15 in this context, I would have to rely on  
16 counsel, which I did.

17 Q. Well, counsel said yes. So  
18 what did counsel -- counsel had to have  
19 some basis -- withdrawn.

20 You said yes, because this was  
21 your statement in this form, wasn't it?  
22 Didn't you say yes?

23 A. No. I signed the form. I'm  
24 responsible for what's in it. But I relied  
25 on counsel.



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2           Q.       So what was your understanding  
3 when you certified the accuracy of the  
4 information that you did act as a general  
5 partner, managing member, et cetera, of a  
6 pooled investment vehicle? What was your  
7 understanding?

8                   MR. PEARLSON: I'm just going  
9 to caution the witness, to the extent  
10 you're revealing impressions or  
11 communications that you received from  
12 counsel, I'm going to instruct you  
13 not to answer.

14                   If you have an independent  
15 understanding outside of your  
16 counsel, you can testify to that.

17           A.       No. I've relied on my counsel.

18           Q.       I have to -- this is your  
19 statement. You've certified the accuracy  
20 of it. You can testify as to when you  
21 certified the accuracy of yes to that  
22 answer, you had to have some understanding  
23 of what a pooled investment vehicle was,  
24 and that's what I'm asking for. What was  
25 your understanding of what a pooled

1  
2 investment vehicle was?

3 MR. PEARLSON: And again --  
4 hold on a sec. Again, I'll repeat my  
5 objection and direct you not to  
6 answer to the extent that  
7 understanding came from conversations  
8 based with you and your counsel.

9 Q. I'm not asking for what your  
10 counsel said to you. I'm asking you when  
11 you certified the accuracy of yes, what --  
12 when you said yes to managing a pooled  
13 investment vehicle, what did you mean?

14 MR. PEARLSON: Same objection,  
15 to the extent that if your only  
16 understanding came from counsel, I'll  
17 direct you not to answer.

18 If you have an independent  
19 understanding outside of your  
20 communications with counsel, that's  
21 fine, you can answer. But if it's  
22 only from talking to counsel, don't  
23 answer the question.

24 Q. Will you answer the question,  
25 Mr. Salerno?

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2 A. No.

3 MR. SACK: I take issue with  
4 the assertion of counsel. So we'll  
5 reserve that issue --

6 MR. PEARLSON: Okay.

7 MR. SACK: -- for a separate  
8 time.

9 Q. Let me show you an SEC  
10 definition of what a pooled investment  
11 vehicle is and see if you agree with that.

12 MR. SACK: Can we have that,  
13 Joe?

14 MR. PEARLSON: Are you marking  
15 that as an exhibit?

16 MR. SACK: Yes, we will. This  
17 will be Salerno Exhibit 2.

18 Q. Turn to page 15 of the  
19 document, please, Mr. Salerno. There's a  
20 definition published by the SEC of a pooled  
21 investment vehicle. The first sentence  
22 reads, "A pooled investment vehicle is an  
23 entity often referred to as a fund that an  
24 advisor creates to pool money from multiple  
25 investors."

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Would you agree with that  
definition of a pooled investment vehicle?

A. Can I read the whole paragraph?

Q. Go ahead.

A. This, to me, is more of an  
example versus a definition.

Q. I think it's both, Mr. Salerno.  
It defines it as "A pooled investment  
vehicle is an entity often referred to as a  
fund that an advisor creates to pool money  
from multiple investors." And then it  
provides various examples of a pooled  
investment vehicle.

So my question is, under the  
SEC's definition of a pooled investment  
vehicle, are you a general partner or  
managing member of any pooled investment  
vehicles?

A. Based on --

MR. PEARLSON: Can we be clear  
about this? You're asking whether he  
personally is, or whether NPPG is?

Q. Whether NPPG Investment  
Services or a related person. And a

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2 related person includes, would you agree,  
3 Mr. Salerno, that you are a related person  
4 to the NPPG Investment Services, or that  
5 your entities you control would be a  
6 related person?

7 A. I'm getting confused. Okay.  
8 What is the question?

9 Q. My question is, do you -- are  
10 you or an entity you control a general  
11 partner or managing member of a pooled  
12 investment vehicle, as defined by the SEC?

13 A. I don't see this as being the  
14 definition from the SEC. This is a jargon  
15 A to Z definition. I don't know what this  
16 is.

17 Q. Mr. Salerno, you can argue with  
18 it all you want. This is a definition put  
19 out by the SEC. My question is based on  
20 what the SEC says is a pooled investment  
21 vehicle.

22 MR. PEARLSON: As --

23 Q. As stated there --

24 MR. SPIRO: Don't interrupt.

25 Q. As stated there, are you a

1  
2 managing member or a general partner of a  
3 pooled investment vehicle, as described on  
4 that page in that definition?

5 MR. PEARLSON: Okay. I believe  
6 his objection was a fair one. You've  
7 put a document in front of him he's  
8 never seen before that just says the  
9 jargon from A to Z, and you're  
10 characterizing it as an SEC  
11 definition.

12 MR. SACK: Ross, that's an  
13 improper speaking objection. You're  
14 coaching the witness. You can object  
15 as to form. That went way beyond the  
16 line of form objections.

17 Q. Mr. Salerno, you can argue all  
18 you want with what the SEC writes. The  
19 SEC's written here what a pooled investment  
20 vehicle is. Were you or a company you  
21 control a general partner or managing  
22 member -- withdrawn.

23 Are you or a company you  
24 control a managing member or general  
25 partner of a pooled investment vehicle as

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2 described in this SEC document?

3 A. With all due respect, sir, if I  
4 look at the last page here, this is not  
5 from the SEC. This says the glossary  
6 represents the views of the staff of the  
7 office of advocate for small business  
8 capital formation. It is not a rule,  
9 regulation or statement of the SEC.

10 Q. Mr. Salerno, I'm going to --

11 MR. SACK: Can I have the  
12 question read back.

13 (Whereupon, a portion of the  
14 testimony was read back.)

15 MR. PEARLSON: Again, I join in  
16 the objection. Same objection with  
17 characterization of this document.

18 Q. Mr. Salerno, are you or a  
19 company you control a general partner or  
20 managing member of a pooled investment  
21 vehicle as defined in this document?

22 MR. PEARLSON: Same objection.

23 A. And let us just establish the  
24 definition. You're saying a pooled  
25 investment is an entity or a fund, so

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2 you're saying the entity is a fund?

3 Q. No. I'm just reading the first  
4 sentence. "A pooled investment vehicle is  
5 an entity often referred to as a fund that  
6 an advisor creates to pool money from  
7 multiple investors."

8 A. No. I do not have a fund.

9 Q. That's not my question.

10 Are you a manager or general  
11 partner of a pooled investment vehicle, a  
12 fund being an example or a way of referring  
13 to it. It doesn't say a definition of a  
14 fund. It's a definition of a pooled  
15 investment vehicle.

16 A. Again, based on my  
17 interpretation of what this document says  
18 that you've put in front of me, it's saying  
19 it's a fund. I do not run a fund.

20 Q. Mr. Salerno, are you the  
21 general partner or managing member of an --

22 Mr. Salerno, are you or an  
23 entity you control a general partner or  
24 managing member of any entity that pools  
25 money from multiple investors?



1

2 THE WITNESS: Can you read it  
3 back, please.

4 (Whereupon, a portion of the  
5 testimony was read back.)

6 A. Yes.

7 Q. What are those? Please name  
8 them.

9 A. Name what?

10 Q. Name the -- are you the  
11 managing member of any entity or general  
12 partner, please name those entities?

13 A. Oh. The entities. Cypress  
14 III.

15 Q. Any others?

16 A. I don't think so.

17 Q. And by Cypress III, you mean  
18 Cypress Holdings, III, L.P.?

19 A. Yes.

20 Q. Do you have a problem if we  
21 just refer to it as Cypress III for  
22 shorthand during the deposition?

23 A. I think that works.

24 Q. Did you -- were you the general  
25 partner or managing member of any entities

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2 that pool money from multiple investors  
3 before Cypress III?

4 A. I'm concerned with the context  
5 that you're asking me this, because  
6 Cypress III is not a pooled investment.  
7 Cypress III is a limited partnership that I  
8 set up for investments for myself, which I  
9 have let some friends into. You're  
10 characterizing it as a pooled investment,  
11 which I don't think is accurate.

12 Q. Well, the friends are not part  
13 of your family and they're investing in the  
14 fund alongside you, correct? They're --  
15 correct?

16 A. Some of them are family.

17 Q. But it doesn't matter --  
18 withdrawn.

19 So what would you call  
20 Cypress III?

21 A. A limited partnership.

22 Q. That you manage, correct?

23 A. Correct.

24 Q. And that you manage it on  
25 behalf of yourself and other investors?

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2 A. Correct.

3 Q. And you and your wife actually  
4 had a minority interest in this limited  
5 partnership as of February 2019, isn't that  
6 right?

7 A. I'm not sure. We may have had  
8 a majority interest at that time. I would  
9 have to look.

10 Q. All right. We will look at it.  
11 As of now, it's a minority  
12 interest, correct?

13 A. As we sit here today, yes.

14 Q. It's 25 percent or less of the  
15 partnership, would you say?

16 A. No.

17 Q. How much -- what's the  
18 percentage today?

19 A. I'm not sure. I think it's  
20 somewhere around 40 percent.

21 Q. So this is a limited  
22 partnership that you manage for yourself  
23 and for others in which you are a minority  
24 owner? Is that an accurate description?

25 A. Today, yes.

1

2 Q. And it holds the assets of  
3 multiple investors?

4 A. I'm concerned -- assets of  
5 investors or assets of investments?

6 Q. Does it hold the assets of  
7 multiple investors?

8 A. It accepted cash from multiple  
9 investors and today holds assets of  
10 investments.

11 Q. And it holds the financial  
12 interests of multiple investors, correct?

13 A. What's the definition of  
14 financial interest?

15 Q. Does it hold -- do the LPs have  
16 separate interests from your own,  
17 Mr. Salerno, in this limited partnership?

18 A. What LPs? I'm sorry.

19 Q. Are there limited partners in  
20 Cypress III?

21 A. Limited partners, yes.

22 Q. The limited partners of  
23 Cypress III have rights to the money in  
24 that fund that are separate and apart from  
25 whatever rights you have to the money in

1

2 the fund, correct?

3 MR. PEARLSON: Objection to

4 form.

5 A. Yeah. I'm not following that

6 question.

7 Q. Okay. They have interests in

8 the Cypress III limited partnership,

9 separate and apart from yours, correct?

10 A. Yes. The seven people have a

11 separate interest. Everyone has their own

12 allocation.

13 Q. And they have -- they put in

14 their own money?

15 A. Correct.

16 Q. You and your wife put in money,

17 correct?

18 A. Correct.

19 Q. And these other individuals in

20 a number of different entities put in money

21 into the limited partnership, correct?

22 A. Those seven or eight people,

23 correct.

24 Q. And you manage the interest of

25 yourself, your wife, and those seven or

1  
2 eight people, correct?

3 A. Correct.

4 Q. And so is it fair to say that  
5 this Cypress III holds the assets of those  
6 multiple investors?

7 A. Yes.

8 Q. In the same -- let's take this  
9 -- I'll set this aside, Mr. Salerno.  
10 Please go back to this document that is  
11 Exhibit 1. And I'm going to direct you now  
12 to, if you wouldn't mind counting eight  
13 pages from the back, and I think we'll be  
14 able to find --

15 A. From the back?

16 Q. From the back.

17 A. Sure.

18 Q. Excuse me. My mistake. It's  
19 seven pages from the back. Excuse me. And  
20 then we'll make sure we're on the same  
21 page.

22 Do you see a box in the middle  
23 of the page? I think -- I'm sorry,  
24 Mr. Salerno, if I could take this document,  
25 I'll direct you to the page.

1

2 A. Thank you.

3 MR. PEARLSON: I think I was on  
4 the same page as him. If you could  
5 tell us.

6 MR. SACK: I think it's one  
7 more.

8 MR. PEARLSON: That has the box  
9 on the bottom that says schedule A?

10 MR. SACK: Correct, Ross.

11 Q. So in that box, under schedule  
12 A, it says direct owners and executive  
13 officers. And then at the bottom, it lists  
14 in a box under full legal name, Ice  
15 Holdings, LLC. Was that a direct owner of  
16 NPPG Investment Services, LLC?

17 A. I would have to check with our  
18 counsel. I relied on them.

19 Q. Was it an owner?

20 A. Yes.

21 Q. It was an owner?

22 A. Yes.

23 Q. And you own Ice Holdings, is  
24 that correct? You're the sole member of  
25 Ice Holdings, LLC?

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2           A.       Ice Holdings, I'm the managing  
3 member, I believe.

4           Q.       There are other members of Ice  
5 Holdings, LLC?

6           A.       Yes.

7           Q.       What does Ice Holdings hold?

8           A.       It holds my family's assets.

9           Q.       It's your holding company?

10          A.       Yes.

11          Q.       What assets are those that it  
12 holds?

13          A.       Numerous.

14          Q.       What are they?

15          A.       Real estate, private holdings,  
16 public stock.

17          Q.       Any other examples? Horses?

18          A.       Not at this time.

19          Q.       Who are the other members of  
20 Ice Holdings, LLC, besides yourself --  
21 withdrawn.

22                   Who were the individual members  
23 of Ice Holdings, LLC, or entity members of  
24 Ice Holdings, LLC?

25          A.       I would have to ask my estate



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2 attorney. It's a part of my estate.

3 Q. Are they immediate family  
4 members?

5 A. Immediate family members are  
6 included, yes.

7 Q. And that would be your wife and  
8 children?

9 A. They are in -- yes, they would  
10 be beneficiaries.

11 Q. Anyone else?

12 A. Yes.

13 Q. Who else?

14 A. People I find dear to me.

15 Q. Other family members?

16 A. Can you define "family"?

17 Q. Are you related -- other people  
18 you're related to by blood?

19 A. Yes, at different levels. Not  
20 immediate. Some not blood.

21 Q. Could you give us the  
22 percentage ownership interest of each  
23 member of Ice?

24 A. I don't know.

25 MR. PEARLSON: I'm going to

1

2 object to this line of questioning.

3 I don't see the relevance of it.

4 But go ahead, if you know.

5 A. I don't know.

6 Q. Were you the majority owner?

7 A. I don't think so.

8 Q. Ice was part of your estate  
9 plan structure, Mr. Salerno?

10 A. Yes.

11 Q. Please turn to the immediately  
12 prior page, and then we'll just make sure  
13 we're on the same one. There is at the  
14 bottom, it is --

15 A. Item 12, small business?

16 Q. If you don't mind, let me just  
17 make sure we're on the right page. Yes.  
18 This is the right page.

19 MR. SACK: And Ross, at the  
20 very bottom in the box, there's a  
21 section H. You have that?

22 MR. PEARLSON: Yes.

23 Q. So I'm going to read excerpts  
24 of H, Mr. Salerno, just to try to focus us,  
25 but you can read that fully.

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2           Actually, before I do, I take  
3 it you thought it was important to be  
4 accurate in this form ADV filed with the  
5 government, correct?

6           A.     I relied on my counsel, I'm  
7 sure.

8           Q.     Did you think it was important  
9 to be accurate?

10          A.     Of course.

11          Q.     H asks, "Has any domestic or  
12 foreign court, sub B, ever found that you  
13 or any advisory affiliate were involved in  
14 a violation of investment related statutes  
15 or regulations?" It's a question, and the  
16 answer is no.

17                 And then subparagraph 2 says,  
18 "Are you or any advisory affiliate now the  
19 subject of any civil proceeding that could  
20 result in a yes answer to any part of a  
21 light item 11 H 1?" And the answer is no.

22                 Isn't that a false answer,  
23 Mr. Salerno? Isn't that a false statement  
24 being made to the government?

25           A.     I don't think so.

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2 Q. Really? You don't think you're  
3 now the subject of a civil proceeding that  
4 involves a violation of investment related  
5 statutes or regulations?

6 A. I don't.

7 Q. You've been sued for a  
8 violation of section 10 B of the Securities  
9 Exchange Act of 1934. There's a lawsuit  
10 against you that claims you violated the  
11 securities laws. Are you aware of that?

12 A. I frankly was not aware that it  
13 was a securities fraud claim, which is  
14 absolutely ridiculous.

15 Q. Mr. Salerno, an amended  
16 complaint was filed against you and Cypress  
17 over a month ago, two months ago, early  
18 March 2023, that alleged that you and  
19 Cypress violated the securities laws of the  
20 United States. Were you aware that suit  
21 was filed against you?

22 A. As far as the time -- I rely on  
23 my counsel. I know there was an amended  
24 complaint. Yes, I know there was an  
25 amended complaint.

1

2 Q. And did you know that an  
3 amended complaint accused you of violating  
4 the securities laws of the United States?

5 A. No.

6 Q. Did you look at the amended  
7 complaint?

8 A. I did.

9 MR. SACK: Let's pull out the  
10 first amended complaint, please.

11 MR. PEARLSON: This is being  
12 marked as Exhibit 3?

13 MR. SACK: Yes.

14 Q. I'm going to direct you to  
15 paragraphs 88 to 96 of that first amended  
16 complaint. Paragraph 88.

17 I'll just direct you first to  
18 the caption. First cause of action,  
19 violation of section 10 B of the Securities  
20 Exchange Act of 1934, and rule 10 B 5  
21 against Salerno and Cypress.

22 And then you see that the  
23 paragraphs after, if you'd like to look,  
24 please do, 88 to 96 detail the securities  
25 laws and regulations at issue and your

1

2 personal alleged violation of those laws  
3 and regulations.

4 Did you tell your lawyer that  
5 you were the subject of a civil proceeding  
6 alleging a violation of investment related  
7 statutes and regulations?

8 MR. PEARLSON: I'm going to  
9 direct him not to answer about what  
10 he told his lawyer.

11 Q. Were you aware that you were  
12 the subject of a lawsuit --

13 A. Yes.

14 Q. -- involving --

15 A. I'm sorry. I didn't -- were  
16 you done with your question?

17 Q. I was not.

18 A. Sorry.

19 Q. On March 31, 2023, when this  
20 document was filed with the government,  
21 were you aware that you were the subject of  
22 a civil case that involved an alleged  
23 violation of investment related statutes or  
24 regulations?

25 A. No.

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2 Q. If the suit had been filed a  
3 month earlier, can you explain why you were  
4 not aware of that?

5 A. I was not aware that it was an  
6 SEC claim. You're putting in front of me,  
7 I see it now, but I was not aware at the  
8 time.

9 Q. You read the document, correct?

10 A. I really don't look at the  
11 causes of action. Typically, when I read  
12 these, I read the facts and I rely on my  
13 attorneys for the legalese.

14 Q. Now that you're aware of the  
15 error, do you plan to amend?

16 A. I'd have to discuss it with our  
17 counsel.

18 Q. Well, why don't you just take a  
19 look at it here while we're here. Look at  
20 the same box we were at. The question is,  
21 H 1 B, "Has any domestic or foreign court  
22 ever found that you or an advisory  
23 affiliate were involved in a violation of  
24 investment related statutes or  
25 regulations?"

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And subparagraph 2 says, "Are you or an advisory affiliate now the subject of a civil proceeding that could result in a yes answer relating to violation of investment related statutes or regulations."

Based on that, do you think you need to amend this form?

A. I would rely on my counsel to advise me.

Q. So you can't answer that question?

A. That's right.

Q. You can't say whether that's -- you're obligated to say yes to that question?

A. I don't know if there's any dispensations that I would be afforded or if this is applicable to this. So I would rely on my counsel.

Q. Let's turn to the NPPG plan professionals form ADV. We'll get that to you in a moment.

So this form ADV was filed in



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2 the -- based on the upper left, on April  
3 10, 2023, and it was reported to be an  
4 other than annual amendment. Do you know  
5 what that is, an other than annual  
6 amendment, Mr. Salerno?

7 A. I do not.

8 Q. If you would turn to the next  
9 to last page, I would appreciate it.

10 MR. PEARLSON: For the record,  
11 this is Exhibit 4, John?

12 MR. SACK: Yes. Thank you,  
13 Ross.

14 Q. Who's Greg Woods?

15 A. Greg Woods is an employee of  
16 NPPG plan professionals.

17 Q. And he's listed here as the  
18 signatory on April 10, 2023. What's his  
19 position with NPPG plan professionals?

20 A. He's the head of investment  
21 fiduciary institutional services.

22 Q. He's listed on this document --  
23 I'm going to give you how he's described  
24 and just ask you whether that's accurate.  
25 He's listed as chief compliance officer,

1

2 director of investments and fiduciary  
3 services. That's on the prior page.

4 MR. PEARLSON: I'm sorry. Your  
5 question, John?

6 Q. Is that his position with NPPG  
7 plan professionals?

8 A. I'm not a title guy. So what  
9 he does is he runs the investment fiduciary  
10 institutional services department.

11 Q. Do you have a compliance  
12 officer in your company, Mr. Salerno? You  
13 don't know that?

14 A. I'm sorry?

15 Q. Do you have a chief compliance  
16 officer for your company?

17 A. For NPPG plan professionals?

18 Q. Yes.

19 A. It's saying here that that's  
20 Greg.

21 Q. I understand it says it there,  
22 but you run the company. Is it true? Do  
23 you have a chief compliance officer?

24 A. I would say it's Greg.

25 Q. It is true. So you're

1

2 saying --

3 A. Yes.

4 Q. You run the company, do you  
5 have a chief compliance officer?

6 MR. PEARLSON: I believe he  
7 asked and answered -- that was asked  
8 and answered.

9 Q. It's Greg?

10 A. It's Greg.

11 Q. What are his responsibilities  
12 as chief compliance officer?

13 A. To oversee the fiduciary  
14 institutional services.

15 Q. And is it your responsibility,  
16 as the person who's running the company, to  
17 get Gregory Woods the information he needs  
18 to fulfill his compliance officer duties?

19 A. Me, alone? Or I own the  
20 company, so I'm accountable?

21 Q. So one of your responsibilities  
22 is to get him information he needs to  
23 fulfill his compliance role, correct?

24 A. Correct.

25 Q. Now, look, please, at the fifth

1

2 page in from the back, and then we'll make  
3 sure we're on the same page. Give me one  
4 second.

5 So it has that box H at the  
6 top. Are you there, Ross?

7 MR. PEARLSON: I can't see  
8 whether it's an H because of the  
9 staple.

10 MR. SACK: It says, "For yes  
11 answer to the following questions,  
12 complete a civil judicial action  
13 DRP." Do you have that?

14 MR. PEARLSON: I was on the one  
15 that says --

16 MR. SACK: Sorry. Fourth in  
17 from the back. There's a box  
18 schedule A at the bottom of the page.

19 MR. PEARLSON: I'm there.

20 Q. So Mr. Salerno, this has the  
21 same questions and answers that we went  
22 over with the investment services document.  
23 And it asks, "Has any domestic or foreign  
24 court ever found that you or an advisory  
25 affiliate were involved in a violation of

1

2 investment related statutes or regulations?

3 Answer, no."

4 And then number 2, "Are you or

5 any advisory affiliate now the subject of

6 any civil proceeding that could result in a

7 yes answer? Answer, no."

8 Is this something -- is this a

9 document that Greg Woods prepared and

10 submitted?

11 A. You would have to ask Greg.

12 Q. You don't know who does it for  
13 your business, who submits this document?

14 A. We would have to ask Greg.

15 Q. You don't know who prepares it  
16 and submits it?

17 A. Our counsel prepared it, I'm  
18 sure.

19 Q. Have you told Greg Woods about  
20 this securities litigation that you're  
21 involved in?

22 A. I didn't even know it was a  
23 securities litigation.

24 Q. Have you told him about this  
25 litigation that you're involved in?

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2 A. I don't recall.

3 Q. So you may not have, is what  
4 you're saying?

5 A. That's very possible.

6 Q. So if you didn't, then really  
7 what you did was you deprived him of  
8 information that he needed to fill out this  
9 questionnaire accurately, isn't that right?

10 MR. PEARLSON: Objection to  
11 form.

12 A. That's your opinion, it sounds.  
13 Not mine.

14 Q. But isn't it -- do you agree  
15 that it's relevant to know whether you're  
16 the subject of a securities related action  
17 against you? Is that relevant to  
18 completing this document?

19 A. Only if it's applicable to this  
20 document in the context of the definition  
21 of advisory affiliate or you, and I need to  
22 speak to our counsel to see whether or not  
23 that that's germane here.

24 Q. So what you really need to do  
25 is bring the information to the people --

1

2 bring the information about this lawsuit to  
3 the people who were involved in submitting  
4 these documents to the government, isn't  
5 that right? You have to bring them the  
6 information?

7 A. That sounds right.

8 Q. And you didn't do that?

9 A. I don't recall if I did or  
10 didn't.

11 Q. Oh, you think you did? You  
12 think you did tell them about this  
13 litigation?

14 A. With all due respect, that's  
15 not what I said.

16 Q. Did you tell them -- did you  
17 tell your counsel and Mr. Woods, who were  
18 involved in submitting these documents,  
19 about this litigation?

20 MR. PEARLSON: Objection. Hold  
21 on. I direct you not to answer to  
22 the extent it's with counsel. You  
23 can answer it with respect to  
24 Mr. Woods.

25 A. I don't recall.

1

2 Q. Let's stay on this document for  
3 a moment. And do you intend to amend this  
4 form for your business, as well as the  
5 other form, Mr. Salerno?

6 A. This is something that Greg  
7 signed. I would bring this up to counsel.

8 Q. And you'll bring it up to him,  
9 as well?

10 A. I will.

11 Q. On the third page in on this  
12 document, we're on the same document,  
13 there's a schedule B of indirect owners.

14 MR. PEARLSON: I'm sorry, John.

15 Third page from the back or third  
16 page into the document?

17 MR. SACK: From the back.

18 Thank you.

19 Q. Do you see a box that lists  
20 indirect owners of NPPG plan professionals?

21 A. Which one is that?

22 Q. It's the box there at the  
23 bottom (indicating).

24 A. Yes. Thank you.

25 Q. I'll have a question for you in



1

2 a moment.

3

4 There's an entity listed there,  
5 Ice Investment Holdings, LLC. What's that  
6 entity?

7

8 A. Ice Holdings.

9

10 Q. Is it the same as the Ice  
11 Holdings entity that I asked you about in  
12 the other ADV?

13

14 A. I believe so.

15

16 Q. You think that's just a -- an  
17 error in the way it's referred to there?

18

19 A. Yeah. I believe so.

20

21 Q. So all of your answers that you  
22 gave earlier about what Ice Holdings is  
23 would apply to this Ice Investment Holdings  
24 here, correct?

25

26 A. Correct.

27

28 Q. What's the Salerno family  
29 trust?

30

31 A. It's a trust.

32

33 Q. And who are the trustees of the  
34 trust?

35

36 MR. PEARLSON: I'm going to  
37 object to the relevance.

1

2 Go ahead, you can answer.

3 A. I don't recall who's the  
4 trustee of that one. It may have been my  
5 mother.

6 Q. Excuse me.

7 A. Oh, I'm sorry.

8 Q. You're saying it may have been  
9 your mother, but you're not sure?

10 A. Right.

11 Q. Who are the beneficiaries of  
12 the trust?

13 MR. PEARLSON: Same objection.

14 A. There are multiple.

15 Q. How many, approximately?

16 A. I don't recall this particular  
17 trust, who the beneficiaries are.

18 Q. Is that family trust part of  
19 your estate plan, as well?

20 A. It is.

21 Q. And who is Salerno -- Leonora  
22 -- well, I'm just going to read it as  
23 written and then ask you who they are.  
24 Salerno Bossie Leonora Carmela, so who is  
25 that person, no disrespect intended?

1

2           A.       Understood. Thank you. That's  
3 my mother.

4           Q.       Her first name is Leonora?

5           A.       Yes. Her birthday was  
6 Thursday.

7           Q.       Very nice.

8                   And this means your mother was  
9 one of the indirect owners of NPPG plan  
10 professionals, correct?

11          A.       I don't think so. This -- and  
12 again, I have to rely on counsel, but I'm  
13 trying to help and answer my questions  
14 directly. I think this says that she's the  
15 trustee of Salerno family trust.

16          Q.       Understood. But you're not  
17 entirely sure why she's listed on this  
18 document, is that right?

19          A.       That's correct.

20          Q.       Mr. Salerno, this document  
21 indicates that --

22          A.       Are we at the same spot? I'm  
23 sorry.

24          Q.       You are. We are. Thank you.  
25                   This document states that the

1

2 interest of Ice Holdings, the Salerno  
3 family trust and Leonora Salerno Bossie  
4 were acquired in December 2022, is that  
5 correct?

6 MR. PEARLSON: I'm going to  
7 object. Again, it refers to her as  
8 the trustee. But --

9 MR. SACK: Well, I'll just  
10 rephrase it.

11 Q. This document indicates that  
12 the reported status of these individuals  
13 was acquired in December 2022. Do you know  
14 what that's referring to, what was acquired  
15 or what they're status was then, as opposed  
16 to different time periods?

17 A. I don't.

18 Q. To your knowledge, have they  
19 had the relationships here for many years,  
20 reported here for many years?

21 A. More than one year.

22 Q. What's NPPG Holdings, LLC?

23 A. It's a limited liability  
24 corporation.

25 Q. What does it hold?

1

2           A.       NPPG holds -- Holdings owns  
3       interest in NPPG plan professionals, NPPG  
4       record keeping services, Pinnacle Financial  
5       Services.    I think that's it.    I'm not  
6       sure.

7           Q.       These are all your assets, the  
8       ones that it holds?

9           A.       Yes, NPPG Holdings.

10          Q.       So this is another of your  
11       holding companies?

12          A.       Correct.

13          Q.       Mr. Salerno, in June 2019, did  
14       you authorize Marc Gross to send a letter  
15       to George Hall?

16          A.       I don't remember the date.

17          Q.       Why don't you take a look at  
18       it, then I'll have a few questions about  
19       that, Mr. Salerno.

20          A.       Sure.

21                   MR. PEARLSON: This is Exhibit  
22                   5?

23                   MR. SACK: Yes.

24          Q.       Let me know when you're ready,  
25       but I'm not rushing you, Mr. Salerno.

1

2 A. Okay.

3 Q. In the second paragraph -- I'm  
4 going to ask some questions about the  
5 second paragraph.

6 Did you retain Mr. Gross before  
7 he sent that letter as your counsel?

8 A. I would think so.

9 Q. You don't know?

10 A. I don't want to get caught up  
11 on the word "retain." Mr. Gross was  
12 working for me. I don't know. But I think  
13 so.

14 Q. Was he working for Cypress  
15 Holdings, as well?

16 A. Yes. He was working for  
17 Cypress Holdings, rather than me. That  
18 would be correct.

19 Q. And you authorized him to send  
20 this letter, correct?

21 A. I did.

22 Q. And you gave him information  
23 that went into this letter, correct?

24 A. I did.

25 Q. This letter says, "Sport-BLX

1

2 has entered into a lease for certain  
3 commercial office space, expending  
4 approximately \$500,000 per annum for an  
5 occupancy for less than five employees."

6

Do you see that?

7

A. Yes.

8

Q. What was your basis for saying

9

that Sport-BLX had less than five

10

employees?

11

A. That was my understanding.

12

Q. From what?

13

A. From Mr. De Perio, Mr. Hall,

14

from my -- going to the office.

15

Q. When did you go to the office?

16

A. I don't recall. But it was two

17

or three times.

18

Q. It was in early 2019, correct?

19

A. I'm sorry. I don't recall

20

exactly.

21

Q. Well, was it in May or June of

22

2019, shortly before the letter?

23

A. Again, I don't recall.

24

Q. Okay. So you say the assertion

25

that there were less than five employees

1

2 was based on your visits to the office?

3 How many visits?

4 A. Probably two or three.

5 Q. And then what else was it based  
6 on?

7 A. It would have been much easier  
8 if they actually gave me the W-2s that I  
9 asked for and the financial records, I  
10 could have easily seen exactly how many  
11 employees it had. But I was not provided  
12 that information.

13 Q. What was your assertion based  
14 on, Mr. Salerno?

15 A. As I said, Mr. De Perio's  
16 comments, my own visual and understanding,  
17 and Mr. Hall's.

18 Q. What did Mr. De Perio say to  
19 you?

20 A. He was telling me we had a few  
21 people working there.

22 Q. When did he say that?

23 A. I don't recall exactly. But it  
24 was obviously prior to this letter.

25 Q. And what did George Hall, he



1

2 just said, the best that you can remember  
3 now, is that we had a few people working  
4 there?

5 A. In that context.

6 Q. What do you mean "in that  
7 context"?

8 A. Yes, it was my understanding we  
9 had less than five employees.

10 Q. And when did he say that to you  
11 in relation to this letter?

12 A. Prior to it.

13 Q. But you can't say whether that  
14 was in January or in June, is that right?

15 A. I cannot.

16 Q. So it may very well have been  
17 before you invested in January?

18 A. That's possible.

19 Q. What did George -- you said you  
20 also relied on statements by George Hall?

21 A. Correct.

22 Q. What did he say to you?

23 A. Basically my understanding was  
24 that we had less than five employees. I  
25 don't remember the exact wording.

1

2 Q. And again, can you give any  
3 timeframe on that statement at all?

4 A. Prior to this letter, I cannot.

5 Q. And let me be clear, did  
6 Mr. De Perio and Mr. Hall say less than  
7 five people working or less than five  
8 employees? What was it?

9 A. I don't recall.

10 Q. Because didn't they tell you  
11 there were numerous people who worked for  
12 Clinton Group, and unpaid interns who also  
13 worked on behalf of Sport-BLX?

14 MR. PEARLSON: Objection to  
15 form.

16 You can answer.

17 A. Why would people from Clinton  
18 Group be working for Sport-BLX?

19 Q. Because weren't you told,  
20 Mr. Salerno, that Clinton Group was  
21 supporting the development of Sport-BLX  
22 during the founders' round fundraising, and  
23 that people at Clinton Group were helping  
24 the development of the company?

25 A. I'm sorry. I'm confused.

1

2 Q. Yes.

3 A. Because the address and the  
4 location for Sport-BLX was Clinton Group's  
5 office. So the employees of Clinton Group  
6 were already working there. So how would  
7 that impact us at all?

8 Q. Because they were working on  
9 Sport-BLX.

10 A. In the office that they were  
11 working in for years prior.

12 Q. Yeah, but people come and go  
13 from a company. People -- there are many  
14 people who work for entities who join as  
15 the business develops, isn't that right?  
16 It's not a static thing, Mr. Salerno.

17 A. I don't think that's what  
18 you're saying, and that's not what this is  
19 saying. You're saying that people should  
20 be added to this number of five, at least  
21 that's what I'm understanding you to say,  
22 that worked for Clinton Group. They had to  
23 go to that office 9:00 to 5:00 every day to  
24 work at Clinton Group, regardless of the  
25 Sport-BLX project.

1

2 Q. But did you know how many  
3 people were working on Sport-BLX when this  
4 letter was sent?

5 MR. PEARLSON: Objection to  
6 form.

7 A. Specifically how many people  
8 worked for Sport-BLX or on the program? On  
9 the project?

10 Q. Both. Weren't both relevant,  
11 Mr. Salerno?

12 A. Well, what's relevant is where  
13 they worked, not if they worked on it. If  
14 they were to report to that office from  
15 9:00 to 5:00, that would be relevant to me.

16 Q. And did you ask George Hall and  
17 Joe De Perio shortly before directing  
18 Mr. Gross to send the letter, how many  
19 people were using the space to work on the  
20 Sport-BLX's business?

21 A. I don't recall.

22 Q. So the only due diligence you  
23 did was to, at some point, speak with  
24 George Hall and Joe De Perio, and at some  
25 point visit the office?

1

2

MR. PEARLSON: Objection.

3

4

Q. That's what you did before  
directing Mr. Gross to send that letter?

5

6

7

MR. PEARLSON: Objection to  
form and the characterization of due  
diligence.

8

Go ahead.

9

A. Can you repeat the question?

10

11

12

13

Q. You've referred to  
conversations with George Hall and Joe De  
Perio and visits to the office before  
having this letter sent, is that right?

14

A. Correct.

15

16

17

Q. Did you do anything else to  
verify the accuracy of that information  
before sending the letter?

18

19

20

A. I asked for financial  
information, which included details on  
payroll, which I did not receive.

21

22

23

Q. I'm going to show you an e-mail  
in a moment. Why don't we pull it out, and  
then I'll say it for the record.

24

25

MR. SACK: Are we up to Exhibit  
6, Hindy?

1

2

COURT REPORTER: Yes.

3

4

A. Before we get into this, can we  
take a quick bathroom break?

5

6

7

MR. SACK: Yeah. Why don't we  
say -- it's 11:00 now. Can we come  
back 10 after 11:00?

8

9

10

THE WITNESS: Sure.

VIDEOGRAPHER: Off the record,  
10:58.

11

12

(Whereupon, an off-the-record  
discussion was held.)

13

14

VIDEOGRAPHER: On the record,  
11:12.

15

16

Q. Mr. Salerno, how were you  
introduced to Marc Gross?

17

18

19

A. Through my accountant.

Q. Who is that?

A. Dave Roth.

20

21

Q. Ross or Roth?

A. Roth, R-O-T-H. Sorry.

22

23

Q. When was that, approximately,  
that you were introduced to Mr. Gross?

24

25

A. Five, six years ago maybe. I'm  
not really sure.

1

2 Q. So we're in 2023 now. So that  
3 would be roughly 2018, 2017, 2018?

4 A. Something like that. Maybe a  
5 little earlier.

6 Q. And your wife's an attorney  
7 too, correct?

8 A. Correct.

9 Q. Does she have professional  
10 dealings with Mr. Gross, as well?

11 A. Can you clarify "professional  
12 dealings"?

13 Q. Working with him in a legal  
14 capacity, such as on cases on the same  
15 side, opposite side, deals, just some kind  
16 of professional working relationship with  
17 him?

18 MR. PEARLSON: Not as a client,  
19 you're talking about working with --

20 MR. SACK: As an attorney.

21 A. As an attorney, I would say no,  
22 I don't think so.

23 Q. As a client, has she been a  
24 client of Mr. Gross?

25 A. Not that I recall.

1

2 Q. And have you used Mr. Gross for  
3 matters other than Sport-BLX related  
4 matters?

5 A. Yes.

6 Q. Matters related to investments?

7 MR. PEARLSON: I just want to  
8 caution the witness. I think we're  
9 getting into attorney/client  
10 privilege.

11 MR. SACK: Yeah, I'm just  
12 asking at the level of subject  
13 matter. I'm not asking for beyond  
14 subject matter.

15 MR. PEARLSON: You can answer.

16 A. I'm concerned about your  
17 definition of investments. I would say  
18 that all of them had to do with money.

19 Q. Please take a look at what's  
20 been marked as Exhibit 6. It's an e-mail,  
21 the cover, it's Cypress Bates number 1215  
22 to 1217, an e-mail and a two-page  
23 attachment. And it's from you,  
24 Mr. Salerno, to George Hall with a CC to  
25 Marc Gross. "See attached request for



1

2 information as we discussed," and it's  
3 dated May 21, 2019.

4 And this comes, Mr. Salerno,  
5 about three weeks, approximately, before  
6 the June 10 letter that you -- that  
7 Mr. Gross sent that we were just  
8 discussing, is that right?

9 A. Yes.

10 Q. And this list has 25 items of  
11 specific information that you -- that  
12 you're seeking. And do you seek in any way  
13 here W-2 information or the number of  
14 employees of the company or the number of  
15 people using the space on behalf of  
16 Sport-BLX?

17 A. I believe that would be covered  
18 under number 1, current financial  
19 statements year-to-date through April 30,  
20 including but not limited to general  
21 ledger, profit and loss statement, balance  
22 sheet, cash flow statements, et cetera.

23 Q. How would financial statements  
24 show the number of people who were employed  
25 or using the space on behalf of Sport-BLX?

1

2           A.       In the profit and loss  
3 statement, typically there would be a line  
4 item for payroll and then a detail  
5 supporting that line item.

6           Q.       You're saying the detail would  
7 include the number of employees, not just  
8 the amount of compensation paid out?

9           A.       Typically, when I do a  
10 financial statement, I have supporting  
11 documentation and you have payroll reports  
12 conclusive of that.

13          Q.       Didn't you see those very  
14 projections during the due diligence phase  
15 in meetings with Mr. De Perio and others,  
16 where they -- where Sport-BLX laid out the  
17 number of employees it anticipated being on  
18 site working in the business?

19                   MR. PEARLSON: Objection.

20          Q.       Can you answer the question?  
21 Didn't you see the very projected  
22 financials and statements about the number  
23 of employees during the due diligence  
24 phase?

25                   MR. PEARLSON: Objection to

1

2 form.

3 You can answer.

4 A. I saw projection. Projections  
5 had certain details --

6 Q. And the projections were in  
7 excess of five employees, weren't they?

8 A. Well, those projections also  
9 showed \$50 million of revenue just --

10 Q. Well, my question is how many  
11 employees --

12 MR. PEARLSON: John, could you  
13 let him finish his answer?

14 MR. SACK: Well, he was giving  
15 an unresponsive answer. I didn't ask  
16 about revenue. I said projected  
17 employees.

18 Q. What was the number of  
19 projected employees?

20 A. I don't recall --

21 Q. Was it in excess of five?

22 MR. PEARLSON: John, can you  
23 please let him finish when you ask a  
24 question?

25 Q. Was the number in excess of

1

2 five?

3 A. The number of what?

4 Q. Employees that you saw in the  
5 materials reviewed during due diligence?

6 A. I would have to look at it to  
7 recall specifically. At what point in  
8 time?

9 Q. But you did look at projections  
10 of employees in due diligence, correct?

11 A. I believe, not specifically,  
12 because at the time, my concern was not  
13 specific to the number of employees. I  
14 looked at the projections in its whole.

15 Q. Other than number 1, current  
16 financial statements year-to-date, is there  
17 any place here where you ask the number of  
18 people using the space to work for  
19 Sport-BLX? Take your time. Look through  
20 the list.

21 A. Understanding your question to  
22 only be with respect to this document, the  
23 answer would be yes.

24 MR. SACK: Okay, let's hear the  
25 question back, please, Hindy.

1

2

(Whereupon, a portion of the

3

testimony was read back.)

4

Q. You're saying yes? Other than

5

number 1, is there anything on this 25-item

6

list that asks for -- withdrawn.

7

So you claim that number 1,

8

current financial statements, would provide

9

the number of people using the space to

10

work for Sport-BLX, is that what your claim

11

is? What would number 1 tell you?

12

A. Number 1 would include detailed

13

reports, which would allow us to see how

14

many employees there are.

15

MR. PEARLSON: John, are you

16

withdrawing your other question about

17

whether there was anything else?

18

MR. SACK: I -- I withdrew

19

that, but I'll get back to it.

20

Q. Is there anything else in your

21

view, Mr. Salerno, other than number 1,

22

relevant to the number of employees using

23

the space?

24

A. Yes.

25

Q. What's that?

1

2 A. Number 21.

3 Q. And that says, "Provide a copy  
4 of employment agreements currently in place  
5 for all employees," is that the one you're  
6 referring to?

7 A. Yes.

8 Q. And you understand that  
9 employees routinely act as employees  
10 without employment agreements, is that  
11 right?

12 MR. PEARLSON: Objection to  
13 form.

14 A. I don't act that way.

15 Q. Well, you're in a business. Do  
16 all of your employees have employment  
17 agreements?

18 A. Yes.

19 Q. And are you aware -- is that  
20 your view, that all businesses have  
21 employees with employment agreements?

22 MR. PEARLSON: Objection to  
23 form.

24 You can answer. Go ahead.

25 THE WITNESS: I'm sorry.

1

2

MR. PEARLSON: Go ahead.

3

4

A. That's what I consider to be  
best practices, yes.

5

Q. Well, that's not my question.

6

7

My question is, is it your view  
that all employers use employment  
agreements with their employees?

9

MR. PEARLSON: Objection.

10

A. I can't speak -- sorry.

11

MR. PEARLSON: Go ahead.

12

13

A. I can't speak to other  
employers.

14

15

Q. But you have experience with  
other employers who don't use employment  
agreements, don't you?

16

17

A. I don't have those  
conversations.

18

19

Q. Have you ever heard of the  
concept of an at will employee?

20

21

A. I've heard of that.

22

23

Q. What does that term mean to  
you?

24

25

A. That an employee can be hired  
or fired.

1

2 Q. Does it also mean to you that  
3 an employee can be hired and fired and  
4 doesn't have an employment agreement?

5 A. No. Why would they not have an  
6 employment agreement?

7 Q. So you're not familiar with, in  
8 21, you thought the request for employment  
9 agreements was a request for all employee  
10 information, is that what you're saying?

11 MR. PEARLSON: Objection.

12 Mischaracterizes what he said.

13 Go ahead.

14 A. What I'm saying is, I'm asking  
15 for an employment agreement for each  
16 employee, that's going to tell me how many  
17 people are there.

18 Q. It's going -- isn't it true,  
19 Mr. Salerno, it's just going to tell you  
20 who has an employment agreement, not how  
21 many employees there are, isn't that right?

22 A. No. That's not my intent here.

23 Q. Did you ask for W-2 information  
24 here?

25 A. Not on this document, no.



1

2

Q. And 25 items, three weeks

3

before you sent that letter, you didn't ask

4

for W-2 information, correct?

5

MR. PEARLSON: Asked and

6

answered.

7

A. That's right. I think I also

8

said that my intent was to obtain the

9

number of employees by number 21, which

10

says provide a copy of the employment

11

agreements.

12

Q. Mr. Salerno, was the subject of

13

usage of space addressed at a board meeting

14

that took place approximately one month

15

after -- approximately one month after this

16

letter that Mr. Gross sent?

17

A. I don't recall timing. I do

18

know that I brought it up on a number of

19

occasions, which there are recordings that

20

can depict what happened accurately.

21

Q. Recordings of the meetings?

22

A. Correct.

23

Q. That you took secretly?

24

A. I wouldn't say secretly. I

25

took.

1

2 Q. What would you say -- secretly,  
3 did you tell anyone else at the meeting  
4 that you were recording it?

5 A. No.

6 Q. You didn't tell anyone else.  
7 You wouldn't call that a secret?

8 A. You're calling it a secret.

9 Q. Well, what would you call it?  
10 Would you call it transparent, Mr. Salerno?

11 MR. PEARLSON: Objection to  
12 form.

13 Go ahead.

14 A. I would call it protecting my  
15 interest to people I don't trust.

16 Q. Secretly?

17 A. Okay.

18 Q. Of course it was secret, wasn't  
19 it? You have to fight on that, that it was  
20 secretly recording a meeting?

21 MR. PEARLSON: He agreed with  
22 you.

23 MR. SACK: After three  
24 questions.

25 MR. PEARLSON: Okay. So why

1

2 are you arguing with him? He agreed  
3 with your answer -- with your  
4 question.

5 Q. Mr. Salerno, we'll call this --  
6 this will be marked as Salerno Exhibit 7, I  
7 think. And these are -- it's Sport-BLX  
8 Bates 21294 to 95.

9 Take a look at it, Mr. Salerno,  
10 then I'll ask you some questions.

11 A. Okay.

12 Q. These are minutes of a meeting  
13 held on July 13, 2019. It records here  
14 that you were unable to attend the meeting,  
15 Mr. Salerno, is that right?

16 A. That's what it says.

17 Q. And did you see minutes of this  
18 meeting after, sometime after July 13,  
19 2019?

20 A. I don't recall.

21 Q. You see here at the meeting,  
22 Mr. Hall and Mr. De Perio address the issue  
23 of usage of space, and they said, "The  
24 monthly rent expense was consistent with  
25 the financial model presented to

1

2 investors," would you agree with that?

3 A. That's what it says.

4 Q. Yeah. Would you agree with  
5 that? Would you agree with the substance  
6 of that statement?

7 A. That's what it says, yes, I  
8 agree with that.

9 Q. No, the -- so you agree that  
10 the monthly rent expense was consistent  
11 with the financial model presented to  
12 investors, would you agree with that?

13 A. I would have to look at the  
14 performance and compare it.

15 Q. Okay. But the \$500,000 per  
16 annum expense for usage of space, that was  
17 consistent with what you had been -- what  
18 you and others had been told in the due  
19 diligence period, correct?

20 A. We were also told it was  
21 generating 50 million dollars a year.

22 Q. Well, you were told that it was  
23 generating 50 million dollars a year or the  
24 hope was to generate 50 million dollars a  
25 year?

1

2           A.       With all due respect, the  
3   entire pro forma was a hope.

4           Q.       Including --

5           A.       The number of employees.

6           Q.       And including the anticipated  
7   rent expense, too?

8           A.       Correct.

9           Q.       So it also says here that  
10   Mr. De Perio also noted the current head  
11   count in the New York City office was at  
12   present 13 paid employees and six unpaid  
13   interns. Did you have any contrary  
14   information to that in July 2019,  
15   Mr. Salerno?

16          A.       I don't believe this to be  
17   accurate.

18          Q.       What's your basis for that?

19          A.       When I was there.

20          Q.       Which was when?

21          A.       Prior to the June letter.

22          Q.       When?

23          A.       I don't recall exactly.

24          Q.       So you don't know whether it  
25   was January, February, March, April, May or

1

2 June, is that right?

3 A. I don't recall specifically the  
4 date.

5 Q. Okay. So again, what's your  
6 basis for saying it was inaccurate that in  
7 July of 2019 there were 13 paid employees  
8 and six unpaid interns?

9 A. That was my understanding.

10 Q. Based on a visit to the office  
11 that you cannot date, as we sit here?

12 A. As well as conversations with  
13 De Perio, Hall, and also Henry Sullivan.

14 Q. And those were conversations  
15 you previously told us you could not date  
16 those either, correct?

17 A. That's correct.

18 Q. So they may very well have been  
19 in early 2019, correct?

20 A. They may have been early '19 or  
21 they may have been right before this  
22 letter, I don't recall.

23 Q. But you're saying you knew  
24 Mr. De Perio was lying in that meeting?

25 A. I didn't say that.

1

2 Q. You said you knew he was not  
3 telling the truth?

4 A. I did not say that.

5 Q. What are you saying?

6 A. I don't believe this to be  
7 accurate.

8 Q. What do you believe to be  
9 accurate?

10 A. Whatever the payroll records  
11 would say. We can get them, you can look  
12 at them and we can determine what is  
13 accurate or not.

14 Q. But in regard to what was said  
15 at this meeting, you have a belief it was  
16 inaccurate, based on what you were told and  
17 observed at undated times, and that's all?

18 MR. PEARLSON: Objection.

19 Asked and answered.

20 A. I'm sorry?

21 MR. SACK: Please, let's have  
22 the question back.

23 (Whereupon, a portion of the  
24 testimony was read back.)

25 MR. PEARLSON: I objected.

1

2                   You can answer, though. Go  
3                   ahead.

4           A.       So I don't believe this to be  
5           accurate because there are other  
6           inaccuracies here. It also states that  
7           Mr. Hall would provide a proposal to the  
8           board in the near term and the shareholders  
9           of the corporation for their approval,  
10          which never occurred.

11                   I think this is something that  
12          was done for a, kind of cover themselves.  
13          It was done at a meeting that I could not  
14          attend. This meeting probably was one of  
15          many that was called literally in 24 hours  
16          or less in advance, and I think this is a  
17          set up.

18                   MR. SACK: We'll move to strike  
19                   as unresponsive.

20          Q.       You're saying you had better  
21          information than Mr. De Perio and Mr. Hall  
22          about who worked on Sport-BLX in July 2019,  
23          is that right?

24          A.       That's not what I said.

25          Q.       Okay. So you believe they were



1

2 not telling you the truth, is that right?

3 A. That's correct.

4 Q. Weren't Mr. Hall and

5 Mr. De Perio in a better position to

6 determine the number of employees needed

7 for the business and the proper use of the

8 space, Mr. Salerno?

9 A. Better position than what?

10 Q. Than you.

11 A. I wouldn't necessarily say

12 that, no.

13 Q. Well, it was their business

14 judgment, as the management of the company,

15 as to the number of people needed and the

16 space needed to run the business

17 productively. Isn't that what managers are

18 supposed to do, exercise their business

19 judgment?

20 A. That is my -- that's my

21 concern, is their business judgment,

22 because they've had -- they had conflicts

23 of interest where the rents were going to

24 them. So therefore, their business

25 judgment was questionable.

1

2 Q. They told you that the rent --  
3 the payment for the space would go to  
4 Clinton Group. That wasn't a surprise to  
5 you.

6 A. Yes, it was.

7 Q. You knew that going in, didn't  
8 you?

9 A. No.

10 Q. You didn't know the business  
11 was housed in Clinton Group?

12 MR. PEARLSON: Objection.

13 Which question are you asking him to  
14 answer?

15 Q. So you didn't know when you  
16 invested that the business was going to be  
17 paying for use of space at Clinton Group?

18 A. No.

19 Q. So the offices you visited  
20 where Sport-BLX was was the Clinton Group,  
21 correct?

22 A. They were the Clinton Group's  
23 offices.

24 Q. And the space, the rental  
25 expense projected was \$500,000 and --

1

2 correct, that was the annual rental expense

3 projected before you invested. You knew

4 that, correct?

5 A. I recall that was on the pro

6 forma.

7 Q. Did anyone ever tell you the  
8 business was going to move from the Clinton  
9 Group to somewhere else?

10 A. No one ever told me it was  
11 going to be in the Clinton Group.

12 Q. Where did you think it was  
13 going to be?

14 A. At some location.

15 Q. Excuse me. You thought George  
16 Hall and Joe De Perio --

17 MR. PEARLSON: Can you let him  
18 finish his answer, please.

19 Q. Sure. At some location, are  
20 you finished?

21 A. Yes.

22 Q. At what location?

23 A. To be determined.

24 Q. So you thought George Hall and  
25 Joe De Perio were going to be shuttling

1

2 back and forth from the Clinton Group

3 office to somewhere else to work on

4 Sport-BLX?

5 A. So are you saying -- I'm not

6 understanding your question because --

7 Q. Go ahead.

8 A. Because they were employees of  
9 Clinton Group, so they would be in Clinton  
10 Group's office. They also had a

11 Glassbridge company that, I believe, had a  
12 different office. They also had other  
13 entities that had different offices.

14 So there was nothing ever told  
15 to me that they were going to be paying  
16 George Hall \$500,000, because I would have  
17 objected to that.

18 Q. When did you -- well, no one  
19 ever told you they were paying George Hall  
20 \$500,000, did they?

21 A. The Clinton Group, I'm sorry,  
22 which is solely owned and is George Hall's  
23 entity.

24 Q. When did you find out that it  
25 was the Clinton Group that was receiving

1

2 funds for the use of space?

3 A. It was before July and it was  
4 somewhere around when we got the first  
5 financials, and -- actually, the only  
6 financials that I was ever given.

7 Q. So would that have been the  
8 June 30 financials, the mid-year financials  
9 that came out, I believe, in July or August  
10 of 2019? Is that when you found out about  
11 the Clinton Group receiving the funds?

12 A. I don't recall it being June  
13 30. I don't recall the dates exactly. I  
14 remember seeing the P&L and the financial  
15 statements and asking questions on it,  
16 being in the board room at the Clinton  
17 Group. And there's a recording of it, so  
18 that's an accurate depiction of it.

19 Q. It was at a board meeting for  
20 -- was it at a Sport-BLX board meeting that  
21 you learned that?

22 A. I'm not sure if it was an  
23 actual board meeting or just a meeting that  
24 we had at Clinton Group.

25 Q. Was this one of the secret

1

2 recordings you referred to earlier or is  
3 this a new one?

4 A. This is one of those  
5 recordings.

6 Q. You're saying it was -- it may  
7 have been a board meeting of Clinton Group?

8 A. I don't recall if it was an  
9 official board meeting.

10 MR. PEARLSON: Objection. I  
11 think you misstated it.

12 MR. SACK: Sorry.

13 Q. It may have been a board  
14 meeting of Sport-BLX?

15 A. It may have.

16 Q. And what else might it have  
17 been?

18 A. Just a meeting.

19 Q. With whom?

20 A. George Hall, Mr. De Perio,  
21 Mr. Strauss and Mr. Ruchalski.

22 Q. And it was to go over  
23 financials -- reported financials for  
24 Sport-BLX, was that the purpose of the  
25 meeting?

1

2           A.       I don't recall the purpose of  
3 the meeting, specifically. I do recall  
4 getting financial statements.

5           Q.       Let me ask you, when was that  
6 meeting that you're referring to --

7           A.       I don't recall.

8           Q.       Excuse me. Let me finish.

9           A.       Sorry.

10          Q.       That you're referring to, the  
11 one that you learned about the Clinton  
12 Group getting rent money? Was it after or  
13 before this July 13 meeting where Hall and  
14 De Perio reported on space usage?

15          A.       I don't recall exactly.

16          Q.       If it was before, could you  
17 give an approximate date?

18          A.       Again, I don't recall. Sorry.

19          Q.       Excuse me one moment.

20                   (Whereupon, an off-the-record  
21 discussion was held.)

22          Q.       This meeting that you're  
23 referring to, it was at the Clinton Group  
24 office?

25          A.       Yes.

1

2 Q. And this was Sport-BLX related  
3 business that you were talking about?

4 A. Yes.

5 Q. And all the people --  
6 withdrawn.

7 And so you were going to the  
8 Clinton Group office for Sport-BLX  
9 business, correct?

10 A. Yes.

11 Q. And did you think there was a  
12 separate Sport-BLX office at the time?

13 A. I didn't think we had an office  
14 at the time.

15 Q. So you knew Sport-BLX was  
16 operating out of the Clinton Group,  
17 correct?

18 A. I believe that Sport-BLX --  
19 Clinton Group employees were officers of  
20 Sport-BLX, as well. And I understood that  
21 they were performing Sport-BLX functions  
22 while working in their normal capacity at  
23 Clinton Group.

24 Q. What do you mean their normal  
25 capacity? This was all in addition to



1

2 whatever they were doing for the Clinton  
3 Group, correct?

4 A. That's what I meant.

5 Q. But the work for Sport-BLX that  
6 you've described was all happening at the  
7 Clinton Group offices, correct?

8 A. No.

9 Q. Where else was it happening?

10 A. Well, you said all. I mean --

11 Q. Were you aware of any work  
12 being done for Sport-BLX at any place other  
13 than the Clinton Group?

14 A. Yes.

15 Q. Where?

16 A. I don't know the location. The  
17 Consensus employees had their own location.  
18 This was also during the time of the  
19 pandemic. Sport-BLX was working remotely,  
20 right, during the pandemic. Sport-BLX  
21 worked remotely prior to the pandemic. So  
22 in my opinion, the Sport-BLX was -- I was  
23 never provided a specific location up front  
24 where they were going to work out of.

25 Q. When you say "up front," you

1

2 were never provided a specific --

3 A. Prior to the investment.

4 Q. -- up front?

5 Prior to the investment.

6 A. Yes.

7 Q. And wasn't it a fact that

8 Consensus employees were working at the

9 Clinton Group on the Sport-BLX project?

10 A. I don't know that.

11 Q. Well, if it's true,

12 Mr. Salerno, then your allegation's false,

13 isn't it? Then your allegation about the

14 space needs and the number of people

15 working there is false?

16 MR. PEARLSON: Objection.

17 Argumentative.

18 Q. Mr. Salerno, do you know

19 whether Consensus staff was working at the

20 Clinton Group on the Sport-BLX project?

21 A. I do not know that.

22 Q. If it's true, would it not

23 undermine your claim that they only needed

24 space for five or fewer employees?

25 A. No. Because Consensus

1

2 employees would not need to work at  
3 Sport-BLX. They have their own office.

4 Q. Well, you can't imagine any  
5 efficiencies or synergies that would come  
6 from having the Consensus employees with  
7 the Sport-BLX employees in one location?

8 MR. PEARLSON: Objection. Let  
9 me get my objection. Objection to  
10 form.

11 Go ahead.

12 A. I'm sorry.

13 That could be done in a space  
14 that's much less expensive than \$45,000 a  
15 month.

16 Q. Isn't that all a matter of  
17 business judgement, Mr. Salerno? This is  
18 not for a director to determine?

19 MR. PEARLSON: Objection.

20 Q. Isn't that right?

21 A. No, it's not.

22 Q. Is it for a 6 percent  
23 shareholder to decide, what the appropriate  
24 space needs and appropriate offices are for  
25 a business?

1

2

A. I think that my investment

3

comes with certain rights. My board seat

4

comes with certain rights. And to voice

5

those opinions when there's \$50,000 a month

6

being syphoned to a self-interested party,

7

I don't think that's appropriate. And I

8

think it's my obligation to the

9

shareholders to voice it.

10

Q. It's the business judgement of

11

the management on the space needs. That's

12

not for a director to determine, is it?

13

MR. PEARLSON: Asked and

14

answered.

15

Q. Mr. Salerno, you were aware

16

that investors and athletes and their

17

families were coming to Sport-BLX, is that

18

right, in this period of the first half of

19

2019?

20

A. I was told as a defense to the

21

office space that that was occurring, yes.

22

Q. Do you believe that was

23

happening?

24

A. To some extent.

25

Q. What did you think was

1

2 happening?

3 A. That Mr. De Perio and Mr. Hall

4 and Mr. Staisil were going out to meet

5 different athletes and their families.

6 They were traveling to see them. They

7 could take them to dinner. They could meet

8 them at their homes. And when I say "their

9 homes," I mean at the athletes' homes, at  
10 other locations.

11 Do I think that the conference  
12 room of Clinton Group was important to get  
13 people to invest or do business with

14 Sport-BLX? No.

15 Q. How do you know that? How do  
16 you know more than Hall, De Perio, and  
17 everybody else connected with the business?  
18 You weren't in the sports business. How do  
19 you know what's important for people to  
20 come when they visit an office? How do you  
21 know that?

22 MR. PEARLSON: Which question  
23 do you want him to answer?

24 Q. How do you know whether it's  
25 important to have an appropriate conference

1  
2 room and office space for potential  
3 investors and athletes and their families?  
4 What is your basis to know that?

5 MR. PEARLSON: Objection.  
6 You can answer.

7 A. My basis to that?

8 Q. Yes.

9 A. Is the result that none of  
10 those athletes moved forward with  
11 Sport-BLX. So it was not beneficial.

12 Q. But when you told them, when  
13 you said they were using space  
14 inappropriately, you didn't know what the  
15 outcome was going to be. You're just  
16 talking with the benefit of hindsight,  
17 Mr. Salerno. We're talking about in May,  
18 June, July of 2019, when this business was  
19 courting investors, athletes, families,  
20 significant people in the sports world, and  
21 you knew better than Hall and De Perio and  
22 everyone else connected with the business,  
23 what type of space was appropriate?

24 MR. PEARLSON: Objection to  
25 form.

1

2           A.       I'm sorry. I don't understand  
3 the question. What's the question?

4           Q.       Okay. In May, June and July of  
5 2019, did you know more than Hall and  
6 De Perio about what the appropriate use of  
7 space was for visitors and employees and  
8 unpaid interns of the company?

9           A.       In my opinion, given the  
10 outcome, the answer would be yes.

11          Q.       Not given the outcome. At that  
12 time, what did you know better and more  
13 than they did in May, June, July of 2019?

14                   MR. PEARLSON: I'm going to  
15 object to the form.

16                   Go ahead.

17          A.       I believe my judgment was  
18 better, especially given the outcome.

19          Q.       You're familiar with the PJ  
20 Washington deal that was done with  
21 Sport-BLX in 2019, so there was a  
22 significant deal done with a significant  
23 athlete?

24          A.       A single athlete, yes.

25          Q.       A significant deal for the

1

2 company, wasn't it?

3 A. Define "significant."

4 Q. It was a star player that would  
5 have been a great proof of concept,  
6 wouldn't it, for the business?

7 A. I don't believe there was  
8 revenues generated.

9 Q. That was not my question.  
10 You're not responding to my question.

11 Wasn't that a significant  
12 development for the business to sign a  
13 significant young athlete in pro  
14 basketball?

15 A. There was no proof that signing  
16 PJ Washington had anything to do with the  
17 conference room of Clinton Group.

18 Q. That's the standard, is  
19 management has to prove to you that a  
20 particular conference room resulted in a  
21 particular deal, or else it's not  
22 appropriate to have the conference room,  
23 Mr. Salerno? Is that the test you applied  
24 as director?

25 MR. PEARLSON: Objection.



1

2 Argumentative. We've been through  
3 this.

4 MR. SACK: The answer was  
5 argumentative.

6 Q. You can answer. You're  
7 arguing, Mr. Salerno.

8 Are you saying that unless you  
9 can prove a connection between a conference  
10 room and a deal, management isn't  
11 authorized to have a conference room that's  
12 clean, appropriate, professional?

13 A. What I'm saying is that a  
14 business decision to do -- a decision by PJ  
15 Washington and his father was probably more  
16 aligned with Sport-BLX hiring his father  
17 than where they met.

18 Q. How do you know that?

19 A. I think it's common sense.

20 Q. Other than your subjective  
21 view, what basis do you have for the  
22 comment you just made?

23 A. I've been doing business for  
24 over 25 years. Relationships count more  
25 than where you meet.

1

2           Q.       Just based on your experience,  
3       that's all you're relying on, that's all,  
4       just your subjective adjustment,  
5       Mr. Salerno, for the comment you just made  
6       about what caused the PJ Washington deal to  
7       be done, is that it?

8           A.       I'm sorry. Can you ask the  
9       question? Because I think you're asking my  
10      opinion, right?

11          Q.       No. I'm saying you made a  
12      statement as to why you think that deal was  
13      done. And I'm asking what your evidence is  
14      for it. You made a statement as to how a  
15      deal was done, and I'm asking you what your  
16      evidence was for that statement?

17          A.       My belief -- my belief of  
18      making that statement is that we --  
19      Sport-BLX did one athlete deal. It's also  
20      the only father that Sport-BLX hired. No  
21      other athletes did a deal with Sport-BLX.  
22      No other fathers or family members were  
23      hired by Sport-BLX. I don't believe the  
24      conference room and the location generated  
25      any additional benefit to get athletes.

1

2           Q.       Mr. Salerno, you, before,  
3       referred to the pandemic as affecting the  
4       use of the space. Was there a pandemic in  
5       2019?

6           A.       No. I'm sorry. What I was  
7       trying to explain was that as done in the  
8       pandemic, people work remotely. People  
9       also work remotely at Sport-BLX.

10          Q.       How do you know that? How do  
11       you know where people were working for  
12       Sport-BLX?

13          A.       Because that's what was told to  
14       me.

15          Q.       But you were also told -- so  
16       you believed you -- when you were told they  
17       were working remotely, but you didn't  
18       believe when they had 13 paid employees and  
19       six unpaid interns and needed the space for  
20       professionals to come to the office?

21          A.       Yes.

22          Q.       So you believed that, but you  
23       didn't believe the other facts I just read?

24          A.       I'm sorry. What's the  
25       question?

1

2 Q. Okay. You believed when you  
3 were told that people were working for  
4 Sport-BLX off the premises of the Clinton  
5 Group, is that correct?

6 A. Yes.

7 Q. Did you disbelieve what you  
8 were told about the number of employees and  
9 interns working at the offices of Clinton  
10 Group?

11 A. Yes.

12 Q. Who told you about the people  
13 working off premises?

14 A. Mr. De Perio, Mr. Hall,  
15 Mr. Strauss, Mr. Ruchalski, Mr. Sullivan.

16 Q. So you believed them when they  
17 told you about the people working off  
18 premises, but you didn't believe them when  
19 they told you about the people working on  
20 premises, is that your testimony?

21 MR. PEARLSON: Again, asked and  
22 answered.

23 Go ahead.

24 A. My testimony is yes, because  
25 when I was in the office and there was no

1

2 one there, they would say they're working  
3 from home or somewhere else.

4 Q. And when you visited the office  
5 and were told that, you can't give us even  
6 an approximate date of when that visit  
7 happened, correct?

8 A. Sometime in 2019, before July  
9 or August.

10 Q. Okay. Even before you  
11 invested, it could have been?

12 A. No.

13 Q. I'm going to show you two  
14 exhibits now. It's a long thread of  
15 e-mails, Mr. Salerno, but I'll point you to  
16 a particular one.

17 MR. PEARLSON: I'm sorry. This  
18 is Exhibit 8 that we're looking at  
19 now?

20 MR. SACK: This is Exhibit 8.

21 MR. PEARLSON: And this is the  
22 one that's Wednesday, April 17, 2019,  
23 at the top?

24 MR. SACK: At the top, yes.

25 Q. Mr. Salerno, the e-mail I'm

1  
2 going to be focusing on in the next few  
3 questions is on Cypress 1028 in the lower  
4 right-hand corner, and then I'm going to  
5 show you another document.

6 (Whereupon, an off-the-record  
7 discussion was held.)

8 MR. SACK: Let's mark the long  
9 thread 9 and the one-pager 8. Thank  
10 you.

11 Q. So take a look at the one-page  
12 document, Mr. Salerno, call it Exhibit 8.

13 This is an invitation for you  
14 to visit the office of Clinton Group at 510  
15 Madison Avenue on January 10th. Was this  
16 one of the visits you were referring to  
17 earlier, as when you saw the Clinton Group  
18 office and saw who was and was not working  
19 there?

20 A. This could have been one of  
21 them.

22 Q. But are you sure there were --  
23 there was more than this one?

24 A. Yes.

25 Q. And was it before or after this

1

2 one?

3 A. I would think it's after.

4 Q. But you don't know?

5 A. I'm not a hundred percent

6 certain.

7 Q. Let's take a look at --

8 A. It would be after. Because  
9 this is showing Mike Staisil also being  
10 involved.

11 Q. Yes. How does that lead you to  
12 think one thing or another about timing?

13 A. Because I was at the office  
14 with Mike Staisil, and then I was at the  
15 office after that without Mike Staisil.

16 Q. How long after?

17 A. I don't recall.

18 Q. In that Exhibit 9, the longer  
19 chain, there is an e-mail dated April 11 at  
20 9:33 a.m. from you to Joe De Perio and  
21 George Hall. It's the Bates 1028 at the  
22 bottom.

23 Why don't you let me know when  
24 you're there. I could direct you to it, if  
25 you prefer.

1

2 A. I got it.

3 Q. This is an e-mail where you  
4 talk about exercising your right to  
5 purchase pro rata shares. And then in the  
6 second paragraph, you talk about  
7 communicating about other matters and you  
8 list a set of bullet points there. And  
9 fifth bullet down is rental agreement,  
10 market rent and address issue of self  
11 dealing. Do you see that?

12 A. Yes.

13 Q. So what were you referring to  
14 there?

15 A. The market rent being above --  
16 the market rent being -- excuse me. Strike  
17 that.

18 This is the rental agreement  
19 with respect to Sport-BLX and the Clinton  
20 Group.

21 Q. So you believe the rent being  
22 paid to the Clinton Group was above market?

23 A. Yes.

24 Q. And what do you mean by  
25 "address issue of self dealing"?



1

2           A.       That the Clinton Group, being  
3       owned by George Hall, there was a self  
4       interest there for George Hall to overpay  
5       himself.

6           Q.       So you knew as of April 11 that  
7       the Clinton Group was getting money for the  
8       use of space, is that fair to say?

9           A.       That would be fair to say.

10          Q.       How did you find that out?

11          A.       I don't recall, as I sit here  
12       today.

13          Q.       Well, it must have been from  
14       either George Hall or Joe De Perio or  
15       someone else connected to Sport-BLX,  
16       correct?

17          A.       That would make sense to me.

18                   MR. PEARLSON: Objection.

19                 Don't speculate. If you know, you  
20                 know.

21          Q.       That makes sense, is that what  
22       you answered?

23          A.       I don't know for a fact. It  
24       seems reasonable.

25          Q.       And so if it were not George

1

2 Hall or Joe De Perio, could you think of  
3 anyone else you would have learned that  
4 from?

5 A. Mike Staisil, Henry Sullivan,  
6 Francis Ruchalski, Daniel Strauss, anyone  
7 else that was involved with Sport-BLX.

8 Q. And that was something you  
9 learned -- how long before April 11 did you  
10 learn that?

11 A. I don't recall.

12 Q. As of July -- as of the time of  
13 this July board meeting, Mr. Salerno, did  
14 you know how many people were working for  
15 Sport-BLX and at Sport-BLX's offices?

16 A. I don't recall.

17 Q. So you don't know whether what  
18 De Perio and Hall said to you was true or  
19 not, is that fair to say?

20 MR. PEARLSON: About what?

21 MR. SACK: About the number of  
22 employees working for and at  
23 Sport-BLX offices.

24 A. I did not receive the payroll  
25 reports and records. So I cannot determine

1

2 a hundred percent if this is accurate or  
3 inaccurate.

4 Q. You didn't know?

5 A. I didn't know.

6 Q. Did you do anything -- did you  
7 find out additional information after July  
8 2019 about who was and was not working for  
9 and at Sport-BLX?

10 A. I asked for payroll records.

11 Q. Did you ask for anything else?

12 A. I don't recall that. I recall  
13 asking for payroll records.

14 Q. Did you get them?

15 A. No.

16 Q. Did you look at the financial  
17 statements as of June 30, 2019 and as of  
18 September 30, 2019?

19 A. I don't recall the dates of the  
20 financial statements. I believe, although  
21 I did ask for financial statements, I only  
22 received one set.

23 Q. We'll talk more about financial  
24 statements in a bit. But I mean, did  
25 George Hall and Joe De Perio continue to

1

2 say to you they had a lot more people  
3 working for and at Sport-BLX than you were  
4 claiming, is that a fair statement?

5 A. I don't recall.

6 Q. Well, did they -- to your  
7 knowledge, were they giving you information  
8 materially different from what they shared  
9 with you and others in the July board  
10 meeting?

11 MR. PEARLSON: Objection to  
12 form. He testified he wasn't at this  
13 board meeting.

14 MR. SACK: I'll rephrase.

15 Q. Did Hall and De Perio give you  
16 materially different information about the  
17 number of employees and interns and others  
18 using the space, materially different  
19 information about those things from the  
20 information reflected in the July 13, 2019  
21 board minutes?

22 A. They never gave me any  
23 information.

24 Q. They gave you information here,  
25 right, in that meeting, and you saw the

1  
2 minutes about the number of paid employees  
3 and unpaid interns and others using the  
4 space, didn't they? They gave it to the  
5 board, and you got these minutes, didn't  
6 you?

7 A. This was a statement. When you  
8 say "information," I take that as giving me  
9 supporting documentation to a statement.  
10 This is a statement made that I was not  
11 there, that I believe they did to cover  
12 their tracks. And no, I was not given  
13 information.

14 Q. Well, you have a funny  
15 definition of information, Mr. Salerno.  
16 You were given specific numbers and  
17 information. You just didn't know whether  
18 it was true or not, isn't that right?

19 MR. PEARLSON: Objection.

20 We've been over this three times now.

21 Q. So your view is when De Perio  
22 and Hall gave you -- made these statements  
23 reflected in a board meeting, that was not  
24 information, according to your definition  
25 of the word?

1

2           A.       This is a statement that did  
3 not have any supporting information.

4           Q.       Did you know whether this  
5 statement was true or false?

6           A.       I believed it to be false.

7           Q.       Did you know whether it was  
8 true or false?

9           A.       Again, I will say, I believe it  
10 was false.

11          Q.       You're commenting on your  
12 subjective belief. Did you have evidence  
13 that it was false?

14                   MR. PEARLSON: I believe he's  
15 asked -- this has been asked and  
16 answered at least three times.

17                   MR. SACK: Because he's not  
18 answering.

19                   MR. PEARLSON: I believe he  
20 did.

21          Q.       Did you have evidence that it  
22 was false?

23          A.       No. I asked for the evidence,  
24 and they wouldn't give it to me.

25          Q.       Mr. Salerno, what we marked as

1

2 Exhibit 10 is the complaint you had filed  
3 against Sport-BLX and others on February  
4 2022. And I'm going to direct you to a  
5 particular paragraph -- I'm sorry. January  
6 2022, my mistake. And I'm going to direct  
7 you to paragraph 23 of this document.

8 You can take your time to look  
9 at it. I'll ask you a few general  
10 questions about the document, and then hone  
11 in on 23. But if you want more time to  
12 look at it, I don't have a problem with  
13 that.

14 You retained Marc Gross to file  
15 this complaint, is that right?

16 A. Cypress did, yes.

17 Q. You, individually, caused that  
18 to happen, correct?

19 A. Yes.

20 Q. You made the decision for  
21 Cypress, correct?

22 A. Correct.

23 Q. And so you made the decision to  
24 retain Marc Gross to file the complaint?

25 A. Yes.

1

2 Q. And you reviewed the complaint  
3 before it went in, before it was filed?

4 A. Yes.

5 Q. And I'm not asking you about  
6 specific communications with Mr. Gross, but  
7 it would be fair to say that this complaint  
8 relies significantly on information from  
9 your own connection to Sport-BLX and  
10 involvement with Sport-BLX?

11 A. I believe, yes.

12 Q. So let me direct you to  
13 paragraph 23. Paragraph 23 states, "In  
14 this regard, apparently Sport-BLX had  
15 entered into a lease for certain commercial  
16 office space, expending \$500,000 per annum  
17 for occupancy for less than five  
18 employees."

19 Do you see that?

20 A. I do.

21 Q. You didn't know whether that  
22 statement was true or false when that was  
23 put in this complaint, isn't that correct?

24 A. I believed it to be true.

25 Q. Yes, but you didn't know



1

2 whether it was true or false, correct?

3 MR. PEARLSON: John, how many  
4 times are you going to ask this  
5 question?

6 Q. Well, this is in the context of  
7 a complaint filed in court. So my question  
8 is, did you know whether the statement made  
9 in paragraph 23 was true or false?

10 A. Again, to the best of my  
11 knowledge, yes, I believed it to be true.

12 Q. Based on the conversations and  
13 meetings at the office that you've  
14 described, is that right?

15 MR. PEARLSON: Asked and  
16 answered numerous times. Can we move  
17 on, please.

18 A. I believe this to be an  
19 accurate statement, yes. And even if it  
20 wasn't five employees, even if this is  
21 true, 13 plus 6 is 19, \$500,000 a year for  
22 19 people is still extremely out of market  
23 and excessive.

24 Q. You're an expert on the  
25 Manhattan real estate market, Mr. Salerno?

1

2           A.       I don't have to be an expert,  
3       but the research I did, and I showed  
4       Sport-BLX an opportunity that would have  
5       saved \$30,000 a month.

6           Q.       A WeWork space?

7           A.       Yes.

8           Q.       An open bullpen area, is that  
9       right?

10          A.       No.    No.

11          Q.       Mr. Salerno, what would be the  
12       advantage to Sport-BLX of having a lease  
13       versus no lease?

14          A.       It would have a full  
15       understanding of its obligations.

16          Q.       Including having to pay  
17       security deposit, correct?

18          A.       That's a negotiable term.

19          Q.       You think you can do a  
20       commercial lease in Manhattan without  
21       paying a security deposit?   You have  
22       information to that effect?

23          A.       I know that that's a negotiable  
24       term.

25          Q.       You think that can be

1

2 negotiated out of a lease, is that right?

3 A. Every lease has negotiable

4 terms.

5 Q. Right. So you don't know --  
6 you don't know what the terms of a suitable  
7 space would be in Manhattan when -- in  
8 2019, during the relevant period, isn't  
9 that right?

10 A. The research that I did showed  
11 a \$30,000 savings to Sport-BLX available to  
12 us.

13 Q. Based on your personal judgment  
14 of what a suitable space was for Sport-BLX,  
15 is that right?

16 A. Based upon research and -- yes.

17 Q. Based on --

18 A. I'm sorry. Finish, please.

19 Q. Based on substituting your  
20 judgment for the judgment of the management  
21 of the company, correct?

22 MR. PEARLSON: Objection.

23 You can answer.

24 A. That was based upon my  
25 experience, my research and what I believe

1

2 to be true.

3 Q. What experience did you have in  
4 Midtown Manhattan real estate, Mr. Salerno,  
5 in mid-2019?

6 A. I did the research and I was  
7 getting information and that was the  
8 experience that I used to help me come up  
9 with a solution.

10 Q. The experience was online  
11 research for WeWork space, is that what  
12 you're referring to?

13 A. I spoke to people at that  
14 office. I spoke to other people in the  
15 real estate industry. And for a small  
16 space, which was necessary, \$500,000 a year  
17 was excessive.

18 Q. Based on your belief that only  
19 a small space was necessary, is that right?

20 A. Small being a relative term,  
21 but yes.

22 Q. Did you know how many agents or  
23 athletes and potential investors and  
24 athletes' family members were coming to the  
25 office?

1

2           A.       Regardless, it didn't need an  
3   entire floor.

4           Q.       Did you know --

5                   MR. SACK: Can I have the  
6   question read back, please, Hindy.

7                   (Whereupon, a portion of the  
8   testimony was read back.)

9                   MR. PEARLSON: John, can we  
10   take a break after this, please.

11                  (Whereupon, a portion of the  
12   testimony was read back.)

13          Q.       And I'm going to add in  
14   mid-2019?

15          A.       Specifically, I did not get a  
16   list of all the people.

17          Q.       Did you know? I didn't ask you  
18   whether you got a list.

19                  MR. SACK: Can I have the  
20   question again, Hindy.

21                  (Whereupon, a portion of the  
22   testimony was read back.)

23          A.       Over what period of time?

24          Q.       Approximately mid-2019?

25          A.       In a single day or a single

1

2 week, single month?

3 Q. How often -- you answer it any  
4 way you want. You just say how many people  
5 were coming in on a weekly, monthly basis.  
6 Did you know? Do you know?

7 A. I'm sorry. What's the  
8 question?

9 MR. SACK: Let's have it again,  
10 Hindy.

11 A. There's a bunch of different  
12 questions flying around.

13 (Whereupon, a portion of the  
14 testimony was read back.)

15 Q. In mid-2019?

16 A. So the question is how many  
17 athletes and agents came to the office in  
18 mid-2019?

19 Q. It was a broader category.

20 MR. SACK: Please, Hindy, I'm  
21 sorry to do this to you, could you  
22 reread the question.

23 (Whereupon, a portion of the  
24 testimony was read back.)

25 A. My interpolation of that was

1

2 less than ten.

3 Q. Per what period of time?

4 A. Over a month or so period.

5 Q. And what's your basis to say

6 less than ten of people in that broad

7 category per month?

8 A. From when I was in the board

9 meetings, and the recordings -- and I'm

10 going by memory, but the recordings will

11 give us an accurate depiction of what

12 happened, what was said, but it was said

13 that -- George Hall had gave me some names

14 of who had been there in the past month.

15 And that is what I'm basing my answer on.

16 Q. So you're basing your answer on

17 information that we will be able to hear in

18 these recordings, is that what you're

19 saying?

20 A. That's what I'm trying to

21 recall, yes.

22 Q. And you think your recollection

23 now is that George Hall told you the number

24 of people, agents, athletes, investors, and

25 family members of athletes who were

1

2 visiting the Sport-BLX office per month,  
3 that's what you think George Hall told you  
4 in these meetings?

5 A. I think you just added  
6 investors to the list.

7 Q. No, investors was there all  
8 along.

9 A. Okay. So I didn't hear that  
10 prior. And he did not say here's a number  
11 of people who were here. He provided names  
12 of people who he had met with.

13 Q. As examples?

14 A. He provided names of people who  
15 he had met with.

16 Q. And you understood that to be a  
17 complete list of every person he met with  
18 at the offices connected to Sport-BLX?

19 A. I didn't think of it in that  
20 context at the time.

21 MR. SACK: Ross, would you like  
22 to take a short break?

23 MR. PEARLSON: Short break.

24 VIDEOGRAPHER: Off the record,  
25 12:17.



1

2

(Whereupon, a short break was  
taken at this time.)

4

VIDEOGRAPHER: On the record,

5

12:29.

6

Q. Mr. Salerno, I asked you

7

earlier today about some form ADV for NPPG

8

Investment Services, and I would like to

9

show you an additional document, which

10

we're up to 11. We'll call this Salerno

11

Exhibit 11.

12

And I'm going to represent to

13

you what this is. You can look through it

14

and then I will direct you to a particular

15

statement.

16

It is the NPPG Investment

17

Services, LLC form ADV part 2 A brochure,

18

which is an attachment to the document that

19

we showed you and was publically filed.

20

And I'm going to refer you specifically to

21

the top of page 4.

22

MR. PEARLSON: John, this was

23

an attachment to Exhibit 1?

24

MR. SACK: It's an attachment

25

to Exhibit 1.

1

2

Q. And in the first paragraph

3

under item 4, it refers to various entities

4

and it says that -- in the fourth line down

5

under item 4, "Ice Holdings, LLC, and

6

Michael M. Salerno are our principal

7

owners." And then it says, "Mr. Salerno is

8

the sole member of Ice Holdings, LLC."

9

And my question is, do you have

10

any reason to doubt the accuracy of that

11

statement?

12

A. I do.

13

Q. You do. What do you believe is

14

the case?

15

A. I believe that there was a typo

16

and maybe taken from a previous -- this

17

would have to be amended. This may be

18

referring to -- I should take that back.

19

This may be referring to the sole managing

20

member.

21

Q. It's untrue as written, is that

22

your belief?

23

A. No. You know what -- I'm not

24

RIA counsel and I would need to talk to

25

them about it.

1

2 Q. You don't know whether that  
3 statement is true or not?

4 MR. PEARLSON: Which one, that  
5 he's the sole member of Ice Holdings?

6 MR. SACK: There's a sentence  
7 there, yes, that Mr. Salerno is the  
8 sole member of Ice Holdings, LLC.

9 A. It all depends, if it's the  
10 sole managing member if it's referencing, I  
11 am. If it's sole member, then I'm not.

12 Q. Were you ever the sole member  
13 of Ice Holdings, LLC?

14 A. Yes.

15 Q. When was that?

16 A. I don't know. I don't recall.

17 Q. When did it change?

18 A. I don't recall.

19 Q. Do you have any approximate  
20 timeframe as to when you created Ice  
21 Holdings, LLC?

22 A. Ten years ago. Fifteen years  
23 ago. Ten years ago. Eight.

24 Q. Let's just say -- I hear you  
25 saying you don't remember. Let's just say

1  
2 approximately ten years ago, and I  
3 understand you said you don't have a  
4 crystal clear memory.

5 When do you believe additional  
6 members were added to Ice Holdings, LLC, in  
7 relation to its creation?

8 A. I don't recall.

9 Q. As of 2018 and 2019, do you  
10 have a belief as to whether you were the  
11 sole member or there were other members?

12 A. On those dates, I don't recall  
13 on those dates, no.

14 Q. You're going to see that this  
15 is corrected and clarified if it's  
16 incorrect, Mr. Salerno?

17 A. If it's incorrect, of course it  
18 will be corrected. But if this is correct,  
19 then no, it won't be.

20 Q. Mr. Salerno, in February of  
21 2019, before you signed the stock purchase  
22 agreement, did you have a meeting at  
23 Clinton Group with Joe De Perio and George  
24 Hall and possibly others to go over the  
25 investment?

1

2 A. I don't know the specific date.

3 Q. Specific date in February or

4 the specific date at all?

5 A. At all.

6 Q. Okay. So you do believe the

7 meeting -- a meeting took place at the

8 Clinton Group offices in January or

9 February 2019, before you signed the stock  
10 purchase agreements?

11 A. I don't remember the month.

12 Q. Was it before your investment?

13 A. Yes.

14 Q. Did you have a meeting with

15 Clinton Group before your investment?

16 A. Yes.

17 Q. And do you believe it was

18 before February 28, 2019?

19 A. I don't recall.

20 Q. So you think it may have been

21 after the 28th, but before March 12th, when  
22 funding happened?

23 A. I don't recall the date.

24 Q. Okay. But it was -- so when I

25 say -- was it before you signed the stock

1

2 purchase agreements on February 28, 2019?

3 A. It was before I signed the  
4 stock purchase agreements, yes.

5 Q. Do you recall a meeting with  
6 George Hall and Joe De Perio at the Clinton  
7 offices before you signed the stock  
8 purchase agreement?

9 A. I recall, yes, the first time I  
10 was there, I was brought there by Michael  
11 Staisil and I met with De Perio and  
12 Mr. Hall.

13 Q. And Staisil, did he stay?

14 A. He did.

15 Q. And how about Henry Sullivan,  
16 was he present for all or part of the  
17 meeting?

18 A. I think he was. But I don't  
19 recall if he was -- if that was before or  
20 after. He was in -- Henry was in some  
21 meetings, not all.

22 Q. Did you bring a binder to that  
23 meeting of material that you gathered about  
24 Sport-BLX?

25 A. I don't recall.

1

2 Q. You may have, you just don't  
3 know one way or the other?

4 A. I don't recall. I don't recall  
5 a binder.

6 Q. At this meeting, did you go  
7 over the projected financials of Sport-BLX?

8 A. I don't recall what we went  
9 specifically over in the meeting.

10 Q. Did you go over projected  
11 expenses and revenues for the business?

12 A. At that meeting, I don't recall  
13 what we went over.

14 Q. Did you ever have a meeting  
15 before signing the stock purchase  
16 agreements where you went over with Joe De  
17 Perio and/or George Hall, the projected  
18 financials of the company?

19 A. If you define a meeting by  
20 telephone conversation, as well as in  
21 person, I'm confident that the answer is  
22 yes.

23 Q. Let me break it down. Do you  
24 recall a physical meeting, an in-person  
25 meeting where you and Joe and/or George

1

2 Hall went over the financial projections  
3 for the company before February 28th?

4 A. Again, when I was there in  
5 person, I don't recall specifically what we  
6 went over. But I know before the -- I  
7 signed, I did discuss with them the pro  
8 forma.

9 Q. And it was either, you're  
10 saying, by phone or in person, you don't  
11 remember which now?

12 A. I don't recall.

13 Q. How long was this meeting --  
14 withdrawn.

15 How long was this discussion  
16 that you're referring to, where you were  
17 discussing the pro formas?

18 A. I don't recall.

19 Q. Was it longer than 30 minutes?

20 A. I don't recall.

21 Q. You have no recollection  
22 whether it was a brief five or ten-minute  
23 call or more like an hour or more  
24 discussion?

25 A. I'm speculating, but it's more



1

2 than five minutes.

3 Q. In this discussion with Joe and  
4 George, did the subject of rent payments  
5 come up?

6 A. I don't believe so.

7 Q. Did the subject of payments to  
8 Clinton Group come up?

9 A. No.

10 Q. Definitely not?

11 A. I say no, because I didn't know  
12 prior to me signing that Clinton Group was  
13 getting paid.

14 Q. When you said -- did you know  
15 when you signed up that Clinton Group would  
16 be paid?

17 A. I'm sorry. Ask the question  
18 again.

19 Q. Your answer was --

20 MR. SACK: If you can read back  
21 Mr. Salerno's prior answer, I would  
22 appreciate it.

23 (Whereupon, a portion of the  
24 testimony was read back.)

25 Q. So my question was, would be

1

2     paid, not was getting paid. Did you know  
3     prior to signing that Clinton Group would  
4     be paid sometime in the future?

5                     MR. PEARLSON: Objection to  
6                     form. Paid what?

7             Q.       Would be paid money?

8             A.       For what?

9             Q.       Anything.

10            A.       No. I want to add to that.  
11     There was something with regard to -- there  
12     was something in the FAQ that said George  
13     Hall -- and I'm trying to go from memory --  
14     George Hall was not to get paid anything  
15     until there was an agreement -- I'm  
16     paraphrasing -- memorializing such.  
17     Something to that effect.

18            Q.       So you were told in the FAQs,  
19     that a time would come when the Clinton  
20     Group would be compensated for various  
21     things, is that right?

22            A.       You're paraphrase -- I can  
23     agree with that in the context of  
24     paraphrasing.

25            Q.       We'll look at it in a moment,

1

2 Mr. Salerno. But I want to go back to this  
3 either phone call or physical meeting. I  
4 want to go back to this phone call or  
5 physical meeting you're referring to. You  
6 said you may have discussed rent payments,  
7 you're not sure, is that right?

8 MR. PEARLSON: Objection. I  
9 don't think that's what he said.

10 But you can answer.

11 A. Can we read back the --

12 Q. I think the answer was "I don't  
13 believe so," but I just want to understand,  
14 you're not saying it -- you said -- I'm  
15 just going to be right up front,  
16 Mr. Salerno. I'm sure nobody said anything  
17 about money to the Clinton Group, but then  
18 when I asked about rent, you said, "I  
19 believe we didn't talk about rent, but I  
20 don't know."

21 MR. SACK: So why don't we hear  
22 Mr. Salerno's answer.

23 (Whereupon, a portion of the  
24 testimony was read back.)

25 Q. So when you say "I don't

1

2 believe so," are you saying it didn't come  
3 up? Or you're saying it may have or may  
4 not have, you just don't remember?

5 A. The latter.

6 Q. In this meeting, did the  
7 subject of payments for space to Clinton  
8 Group come up?

9 A. No.

10 Q. Did the subject in this meeting  
11 come up of the number of employees  
12 projected in the course of 2019 come up?

13 A. I don't believe so.

14 Q. Okay. And again, does "I don't  
15 believe so" mean it may have come up or it  
16 might not have come up, you just don't  
17 know?

18 A. I don't know.

19 Q. In conversation with Mr. Hall  
20 or De Perio or both, did one or both of  
21 them say to you, if you don't agree with  
22 the amount of money for rent, then don't  
23 invest?

24 A. I don't believe so.

25 Q. They may have said that to you,

1

2 they may not have, you just don't remember  
3 one way or the other, is that right?

4 A. I would say if it was in a  
5 board meeting that they said that, there's  
6 a recording of it and I don't recall  
7 specifically.

8 Q. I'm not asking you about a  
9 board meeting. I'm not asking you about a  
10 secret recording. I'm asking you in a  
11 meeting, before you signed the stock  
12 purchase agreement -- agreements, did Joe  
13 De Perio or George Hall say to you in  
14 substance, if you don't like the amount of  
15 the rent, then don't invest?

16 A. No.

17 Q. Definitely, they didn't say  
18 that to you?

19 A. They did not.

20 Q. Did they say in a meeting or  
21 conversation before February 28, 2019 that  
22 if you don't like the fact that Clinton  
23 Group would be getting money for rent or  
24 otherwise, don't invest?

25 A. No.

1

2 Q. Did you -- did you have a  
3 meeting or conversation with Mr. De Perio  
4 at or about the time you had dinner with  
5 him at a steakhouse in New Jersey?

6 A. I had dinner with him, yes.

7 Q. You had dinner with him in New  
8 Jersey?

9 A. Right.

10 Q. And did you have a meeting with  
11 him to discuss the financials of the  
12 company, either the same day or within a  
13 few days of that dinner meeting with him?

14 A. I'm sorry. What are you  
15 asking?

16 Q. I'm asking you, did you have a  
17 meeting with Mr. De Perio where you  
18 discussed the financial projections of the  
19 company on the day of your dinner meeting  
20 or within a few days of the dinner meeting  
21 with Mr. De Perio?

22 A. I'm concerned about you saying  
23 the word "meeting." Does that mean in  
24 person? Because I don't believe so.

25 Q. Did you have a conversation

1

2 with Mr. De Perio about the projected  
3 financials of the company on the same day  
4 that you had dinner with him in New Jersey  
5 or within a few days of that dinner?

6 A. I don't recall specifically.  
7 But I remember having a conversation with  
8 Mr. De Perio on financials, somewhere  
9 around that dinner date.

10 Q. Did the subject of projected  
11 rent come up in that conversation with  
12 Mr. De Perio?

13 A. No.

14 Q. Did the subject of payments to  
15 Clinton Group come up in that conversation  
16 with Mr. De Perio?

17 A. No.

18 Q. Did the subject of the number  
19 of employees in 2019 at Sport-BLX or  
20 working for Sport-BLX come up in that  
21 conversation?

22 A. Can you repeat that question?

23 Q. Yeah. In that conversation  
24 you're now referring to with Mr. De Perio,  
25 did the projected number of employees for

1

2 2019 come up in conversation?

3 A. I don't believe so.

4 Q. But it may have. You just  
5 don't remember one way or the other,  
6 correct?

7 A. I don't recall that, yes.

8 Q. And did Mr. De Perio, either at  
9 dinner or in this conversation we're  
10 talking about, say if you don't agree with  
11 the amount of rent or payments to Clinton  
12 Group, then don't invest?

13 A. He never said that.

14 Q. Mr. Salerno, did Sport-BLX, in  
15 the material you looked at in due  
16 diligence, did it project revenue in the  
17 first year, in 2019, or only in out years?

18 A. I don't know what calendar year  
19 it projected. It gave projections on an  
20 annual basis.

21 Q. It would be in the due  
22 diligence materials that would be provided  
23 to you, correct?

24 A. It would. I just don't know if  
25 it was saying it was from May 2019 to April



1

2 2020, et cetera. I remember there was  
3 three columns, and there was multiple years  
4 of revenue.

5 Q. In the first year of the  
6 company, was there projected revenue?

7 A. I don't recall. Have to look  
8 it up.

9 Q. Mr. Salerno, after this letter  
10 that Marc Gross sent on June 10, 2019, the  
11 one I asked you about earlier, did you  
12 learn about a conflict of interest that  
13 Mr. Gross had -- that Mr. Gross and his  
14 firm had in representing you and Cypress?

15 A. Yes.

16 Q. How did you learn that?

17 A. Mr. Gross told me.

18 MR. PEARLSON: All right. I'm  
19 going to caution you not to go into  
20 what Marc Gross told you as your  
21 attorney.

22 MR. SACK: Even on the  
23 existence of a conflict? That's not  
24 seeking or giving legal advice, is  
25 it? I don't see the basis for the

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2 privilege assertion, Ross.

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MR. PEARLSON: Okay. If you want to move on that, I'm going to direct him not to answer any advice he was given on the conflict issue by Mr. Gross.

MR. SACK: I'm not going to ask him about advice. Let's take it question by question and see where we go.

Q. Did there come a time when you learned about a conflict?

MR. PEARLSON: You can answer that.

A. Yes.

Q. And did the -- in your understanding, did the conflict relate to Fox Rothschild's representation of Glassbridge, a significant Sport-BLX shareholder?

MR. PEARLSON: Again, to the extent that that was based on your discussions with Mr. Gross, I'm going to direct you not to answer that.

1

2 Q. Can you answer the question,  
3 Mr. Salerno?

4 A. I cannot.

5 Q. When did you learn about a  
6 conflict in relation to this June 10th  
7 letter?

8 A. Oh. In relation to the June  
9 10th letter?

10 Q. Yeah.

11 A. I don't recall a conflict in  
12 relation to that.

13 Q. By "in relation," I mean when  
14 in time in relation to that. Did you learn  
15 about a conflict before the June 10th  
16 letter or after the June 10th letter?

17 A. Much after.

18 Q. How long after?

19 A. After he filed a complaint --  
20 no. That's not true. I don't -- I don't  
21 recall. I don't want to speculate.

22 Q. Okay. I'm going to show you an  
23 e-mail chain and I'll ask you a few  
24 questions about that.

25 A. Can I write a note? I just

1

2 want to remember something for myself  
3 later.

4 MR. PEARLSON: No, no, no. Sit  
5 down.

6 MR. CARBONE: Only if you share  
7 it with all of us.

8 THE WITNESS: I'll share it  
9 with everyone. I just wanted to  
10 write to not forget to talk to  
11 counsel about ADV. Can you write it  
12 down?

13 MR. PEARLSON: We'll take care  
14 of it.

15 Q. Okay. Let me just describe  
16 these, Mr. Salerno, and then I'll direct  
17 you to particular communications. This is  
18 an e-mail chain.

19 MR. PEARLSON: This is Salerno  
20 12?

21 COURT REPORTER: Yeah.

22 Q. And it's marked -- it's a chain  
23 that begins GBE 11250 to GBE 11261. And  
24 this is a set of e-mails you're not on, but  
25 I want to see if it refreshes your

1

2 recollection, Mr. Salerno. And so why  
3 don't we begin on Bates 11259.

4

5 There's an e-mail at the bottom  
6 of the page. It's from Joe De Perio to  
7 others, July 10, 2:20 p.m. So this is  
8 about one month after that June 10th  
9 letter. "I write to you" -- this is to a  
10 number of people connected to Fox  
11 Rothschild, copying George Hall and Daniel  
12 Strauss.

13 "I write to you as chairman of  
14 Glassbridge Enterprises. You may or may  
15 not recall that George Hall and I own 26  
16 percent and 2 and a half percent of  
17 Glassbridge stock, respectively. And then  
18 I'm also the president of Sport-BLX, Inc.,  
19 and George Hall is executive chairman. He  
20 and I are founders and own 75 percent of  
21 the stock of Sport-BLX. It was distressing  
22 to receive the enclosed correspondence from  
23 one of your partners on behalf of Cypress  
24 Holdings, III, L.P." -- and I'll represent  
25 that it was this June 10th letter.

25

And then I will go ahead to

1  
2 August 16th in this chain. And it's at GBE  
3 11255. It's another e-mail from Joseph De  
4 Perio to a number of people. It's Fox  
5 Rothschild copying Hall and Strauss. "Pam,  
6 Marc Gross's name has again resurfaced in  
7 correspondence antagonistic to our  
8 company."

9 And then I'm going to skip the  
10 next paragraph and then read, "I thought  
11 this was resolved in our last e-mail  
12 exchange, but it appears he continues to  
13 get advice." "He" being -- "he continues  
14 to gets advice from Fox Rothschild to our  
15 detriment."

16 So Mr. Salerno, this is  
17 referring to yet another e-mail that you  
18 sent to George Hall and others, copying  
19 Marc Gross in August. So what I'm asking  
20 you is, did you find out --

21 MR. PEARLSON: I'm sorry. Who  
22 sent it? Did you say he sent it? I  
23 think you misstated something in your  
24 question.

25 MR. SACK: No, no. Okay.

1

2 Let's get this -- can I get that  
3 August e-mail?

4

MR. PEARLSON: John, my only  
5 question was in the August e-mail, I  
6 thought you said in the question that  
7 he sent it.

8

MR. SACK: He did. Mr. Salerno  
9 did. So go back one -- go to 11256.  
10 This forwards an e-mail from Michael  
11 Salerno to George Hall, copying Marc  
12 Gross on August 16, 2019.

13 Q. The discussion here is about  
14 providing information to FINRA, that's  
15 forwarded, and then Joe De Perio says to  
16 others at -- at then Fox Rothschild in the  
17 next e-mail, August 16 at 11:10 a.m., "Pam,  
18 Marc Gross's name has again resurfaced in  
19 correspondence antagonistic to our  
20 company."

21

And then skipping the next  
22 paragraph, the third paragraph says, "I  
23 thought this was resolved in our last  
24 e-mail exchange, but it appears he  
25 continues to get advice from Fox Rothschild

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2 to our detriment."

3

4 And I believe, Mr. Salerno, the  
5 reference to "he" is to you. And so my  
6 question is, did you learn in July 2019, in  
7 June or July 2019 that there was a conflict  
8 in Mr. Gross representing you and Cypress  
9 and that Fox Rothschild had directed  
10 Mr. Gross no longer to do work for -- for  
11 Cypress or you in relation to Sport-BLX?

12 MR. PEARLSON: I'll object to  
13 the form.

14 You can answer.

15 A. I don't recall when Marc told  
16 me there was a conflict.

17 Q. When you copied him on your  
18 August 16th e-mail that is on 11256, was he  
19 continuing to represent you in relation to  
20 Sport-BLX matters?

21 A. I don't recall.

22 Q. Would you have copied him on  
23 the e-mail if he wasn't representing you on  
24 Sport-BLX matters?

25 A. I may have done it just out of  
-- he was on other e-mails to George Hall,



1

2 and this was another one.

3 MR. PEARLSON: I want you not  
4 to guess.

5 A. No, then I can't answer. I'm  
6 sorry.

7 Q. So what you're saying is he may  
8 have been representing you then or he may  
9 not have been representing you then, you  
10 just don't know?

11 A. I don't recall.

12 Q. Do you recall learning before  
13 August 16th of a conflict or potential  
14 conflict that would preclude him from  
15 representing you and Cypress?

16 A. I don't recall when he told me.

17 Q. Mr. Salerno, staying with this  
18 August -- 11254, there's an e-mail at 2:23  
19 from Pamela Thein to Joe De Perio and  
20 others. It says, "Joe, I'm sorry to read  
21 this message. As I wrote to you earlier, I  
22 was told Marc withdrew. I have asked about  
23 Marc's names on that e-mail."

24 Does this refresh your  
25 recollection as to whether in or about

1

2 August of 2019, Mr. Gross had withdrawn  
3 from doing work for you and Cypress in  
4 relation to Sport-BLX?

5 A. It does not.

6 Q. And you just don't know whether  
7 that's true or not that Marc withdrew?

8 A. Marc did withdraw. I do not  
9 recall the date.

10 Q. Do you believe it was sometime  
11 after August 16, 2019?

12 A. I don't recall. I'm sure  
13 there's documentation.

14 Q. Would you have included his  
15 name on an e-mail as a CC, had he withdrawn  
16 as counsel?

17 A. As I said before, it may have  
18 been just because he was on previous  
19 e-mails to George Hall.

20 Q. So let's go now to 11251,  
21 Mr. Salerno.

22 A. Sure.

23 Q. It begins at the very bottom of  
24 the page, from Michael Salerno, September  
25 3, 2019, to Joe De Perio and others,

1  
2 copying Marc Gross.

3 "Joe, the minutes you attached  
4 are a gross misrepresentation of what  
5 actually occurred," et cetera. Why did you  
6 copy Marc Gross about board meeting  
7 minutes?

8 MR. PEARLSON: You're on 11252,  
9 Jonathan, right?

10 MR. SACK: 11251 is the very  
11 beginning, and it carries over to  
12 11252. But it shows that Mr. Salerno  
13 copied Marc Gross on an e-mail to Joe  
14 De Perio about board minutes.

15 Q. Why was he copied?

16 A. I don't recall.

17 Q. Was he still your lawyer then?

18 A. Again, I don't recall when they  
19 sent me the -- gave correspondence to the  
20 conflict.

21 Q. Did you get correspondence  
22 about the conflict?

23 A. Yeah. Marc called me. There  
24 may have been a letter. I forget. Marc  
25 definitely called me. There may have been

1  
2 a follow-up letter.

3 Q. Can you go to the very first  
4 page in the e-mail chain, Bates GBE 11250  
5 on September 3rd from Pam Thein to Joe De  
6 Perio and others.

7 "Joe, Marc Gross confirmed this  
8 afternoon that he is not representing  
9 Michael Salerno in this matter and referred  
10 Mr. Salerno to other legal counsel."

11 Skipping a paragraph, "Marc should not be  
12 copied on any future e-mails you receive  
13 from Mr. Salerno on this matter."

14 Were you advised in or about  
15 early September 2019 that Mr. Gross is not  
16 representing Michael Salerno in this  
17 matter?

18 A. I don't recall the timeline.  
19 Marc Gross did call me --

20 MR. PEARLSON: I don't want you  
21 to go into what Marc Gross said. The  
22 question was the timing.

23 A. Yeah. I don't recall the  
24 timeline.

25 Q. Did he refer you to other legal

1

2 counsel?

3 A. Yes.

4 Q. And was that in the fall of  
5 2019?

6 A. I don't recall the timeline.

7 Q. Did it precede the books and  
8 records demand that counsel sent in  
9 November 2019 on your behalf?

10 A. Can you say that again.

11 Q. Yes. Mr. Salerno, a lawyer by  
12 the name of Ed Kole sent a books and  
13 records demand to Sport-BLX in November  
14 2019. Was he the lawyer you were referred  
15 to by Mr. Gross?

16 A. Yes.

17 Q. Did Mr. Gross tell you -- did  
18 you learn of the conflict that Mr. Gross  
19 and his firm had before November 2019?

20 A. I don't recall the timeline. I  
21 hired Mr. Kole after being introduced to  
22 him by Mr. Gross.

23 Q. And you were introduced to him  
24 because Mr. Gross told you, in substance,  
25 that he could not represent you any longer

1

2 vis-à-vis Sport-BLX, correct?

3 MR. PEARLSON: I'm going to  
4 object.

5 And direct you not to answer  
6 that one.

7 Q. Did you begin working with  
8 Mr. Kole as your counsel because Mr. Gross  
9 could no longer represent you in regard to  
10 Sport-BLX?

11 MR. PEARLSON: You can answer  
12 that.

13 A. Yes.

14 Q. And that -- and that would have  
15 been before the books and records demand,  
16 correct?

17 A. What's the timeline?

18 Q. I've told you, the books and  
19 records demand was in November 2019.

20 A. With Mr. Kole.

21 Q. That Mr. Kole sent, correct.

22 A. Yes. Mr. Kole sent a demand  
23 for records.

24 Q. And he sent it -- I'm going to  
25 represent to you, he sent it to Sport-BLX

1

2 in November 2019. So Mr. Gross -- just  
3 representing that. Did Mr. Gross's  
4 representation of you stop before the books  
5 and records demand letter was sent?

6 A. Yes.

7 Q. How is it, then, that Mr. Gross  
8 filed a complaint against Sport-BLX in  
9 February of -- in January of 2022 if his  
10 representation ceased?

11 THE WITNESS: Can I answer  
12 that?

13 MR. PEARLSON: If it's based on  
14 your discussions with him --

15 THE WITNESS: Yeah, it is.

16 MR. PEARLSON: -- then no.

17 Q. Did you see any problem at all  
18 in using a law firm that represented  
19 Glassbridge to sue Sport-BLX? Did you see  
20 any problem at all with that?

21 A. I'm not an attorney. Why would  
22 I see a problem with that?

23 Q. Because his representation had  
24 ceased due to a conflict, correct?

25 A. I don't think I should answer

1  
2 because it's -- my actions were based upon  
3 conversations with Marc.

4 Q. Following conversations with  
5 Marc, did you determine it was appropriate  
6 for him to represent Cypress in a suit  
7 against Sport-BLX?

8 A. Yes. He filed a complaint with  
9 Cypress.

10 Q. And after your conversations  
11 with Marc Gross, did you determine that it  
12 was appropriate for Fox Rothschild and  
13 Mr. Gross to sue Glassbridge Enterprises?

14 A. Again, that's all based upon  
15 conversations with --

16 MR. PEARLSON: No, no. He's  
17 not asking for the substance. He  
18 wants to know just after talking to  
19 him -- that was the question, without  
20 getting into the substance of your  
21 conversation.

22 MR. SACK: Let's do the  
23 question again.

24 Hindy, could you read back the  
25 last question, please -- Okay. Let



1

2 me try it.

3 Q. Following your conversations  
4 with Marc Gross in 2019, did you determine  
5 it was appropriate for Marc Gross and Fox  
6 Rothschild to sue Glassbridge Enterprises?

7 A. My determination was based upon  
8 conversations with Marc, which that's my  
9 trepidation of answering.

10 Q. Did you believe it was  
11 appropriate?

12 A. Again, my belief of why it was  
13 appropriate goes to the conversations I had  
14 with Mr. Gross.

15 Q. You wouldn't have authorized  
16 that lawsuit unless you believed it was  
17 appropriate, correct?

18 A. Again, it's all based upon my  
19 conversations with Mr. Gross.

20 Q. Did you go against the advice  
21 you got from Mr. Gross?

22 MR. PEARLSON: I'm going to  
23 object.

24 You can go ahead, if you can  
25 answer that without revealing the

1

2 contents of your conversations with  
3 Mr. Gross.

4 A. No. That's -- my actions were  
5 based upon my conversations with Mr. Gross.

6 Q. And those actions include  
7 authorizing the filing of a suit against  
8 Sport-BLX and Glassbridge and George Hall  
9 and Joe De Perio, correct?

10 A. Those were my actions.

11 MR. SACK: I think why don't we  
12 break for lunch.

13 MR. PEARLSON: Off the record.

14 VIDEOGRAPHER: Off the record,  
15 1:09.

16 (Whereupon, a short break was  
17 taken at this time.)

18 VIDEOGRAPHER: On the record,  
19 2:03.

20 Q. Mr. Salerno, when did you first  
21 hear about Sport-BLX?

22 A. In Birravino restaurant.

23 Q. When was that?

24 A. I don't recall the date.

25 Q. Where is that?

1

2 A. In Red Bank, New Jersey.

3 Q. Who did you hear about

4 Sport-BLX from?

5 A. Mike Staisil.

6 Q. What was your relationship with

7 Mike Staisil?

8 A. He was a friendly acquaintance.

9 Q. Do you think that was in late  
10 2018 or early 2019?

11 A. That sounds about right.

12 Q. What do you remember about that  
13 conversation relating to Sport-BLX?

14 A. Mike said it was a very  
15 interesting and good investment. He  
16 introduced me to Henry Sullivan. They told  
17 me the concept about basically  
18 fractionalizing assets, particularly sports  
19 assets, that would then be sold onto --  
20 sold from an exchange, a platform, which  
21 Sport-BLX would create. That was really  
22 about it. It was a concept there that  
23 Sport-BLX would be a fund, would raise  
24 money. The fund will buy the assets, the  
25 assets could appreciate in value to

1

2 generate profit for Sport-BLX.

3 The -- they would also charge a

4 fee, a management fee, and then basically

5 create a market by selling those assets to

6 the public through the Sport-BLX exchange,

7 and then hopefully creating a buzz and

8 those people who would originally buy the

9 asset would then sell the asset on

10 Sport-BLX exchange.

11 Q. So you're talking about two  
12 conversations you had, one with Mike  
13 Staisil at a restaurant in Red Bank and  
14 then a follow-up conversation with Staisil  
15 and Sullivan?

16 A. Yes. And both of them were at  
17 Birravino.

18 Q. So we're talking about two  
19 conversations now in roughly late 2018,  
20 early 2019, is that right?

21 A. That sounds about right.

22 Q. And what you're saying is they  
23 told you about Sport-BLX would create a  
24 platform for trading these fractionalized  
25 sports assets, is that part of it?

1

2 A. That's part of it, yes.

3 Q. And that was the -- that was  
4 the technology part of the company, that  
5 technologically they were going to build  
6 out this trading platform for these assets?

7 A. I would agree.

8 Q. And they also told you about a  
9 fund, is that right?

10 A. Correct.

11 Q. And did they tell you the fund  
12 was in existence or that that was the fund  
13 that was a hope or a prospect down the  
14 road?

15 MR. PEARLSON: Objection to  
16 form.

17 A. No. They didn't context it as  
18 being -- they didn't compartmentalize it.  
19 They said the Sport-BLX investment was a  
20 part of this investment that would raise  
21 capital, would manage it, which was the  
22 fund, and then it would monetize those  
23 assets on the Sport-BLX's exchange, the  
24 technology.

25 Q. So in your understanding, based

1

2 on these conversations with Staisil and  
3 Sullivan, you thought Sport-BLX could both  
4 be an investment fund and the exchange on  
5 which these investments were traded?

6 A. Sport-BLX, yes, would have an  
7 interest or own it directly, yes.

8 Q. You didn't think that would be  
9 a conflict for Sport-BLX to both invest in  
10 these fractional athlete units and be the  
11 trading platform for these fractional  
12 units?

13 A. No.

14 Q. You thought that would pass  
15 muster with the SEC for it to be both the  
16 fund that owned and traded the assets and  
17 be the platform on which these assets were  
18 traded?

19 A. I was relying on what they were  
20 saying as being accurate. I didn't foresee  
21 an issue with it. And then they followed  
22 up with a deck that showed exactly that.  
23 So no, I didn't.

24 Q. What deck are you referring to?

25 A. There were a few different

1  
2 investment decks that were provided to me.

3 (Whereupon, an off-the-record  
4 discussion was held.)

5 Q. I'm going to show you some  
6 materials and I'll ask you a few questions  
7 about those.

8 We'll call it Salerno  
9 Deposition Exhibit 13, Cypress Bates stamp  
10 1607 to 1610.

11 Are these the set of frequently  
12 asked questions that you saw in early 2019,  
13 Mr. Salerno?

14 A. They appear to be.

15 Q. And you saw a document like  
16 this in the data room, correct?

17 A. I don't know how I got it, but  
18 yes, this was what I refer to as the  
19 frequent -- the FAQ, frequently asked  
20 questions.

21 Q. Please take a look at the third  
22 page of the document, 1609 and item 10. It  
23 lists three ways, three responses to the  
24 question how does Sport-BLX make money. It  
25 says, number 1, "We will charge initial

1  
2 tokenization fees to horse owners and  
3 athletes seeking to create trade tokens.  
4 We may choose to wave the initial  
5 tokenization fees for initial product."

6 Number 2, "At the time of the  
7 initial sale of tokens to the public, we  
8 will charge fees for the sale of the  
9 initial trade tokens when proceeds are  
10 realized by the seller."

11 3, "For every subsequent trade  
12 of the tokens, we will charge transaction  
13 fees to both buyers and sellers."

14 Where does it say there,  
15 Mr. Salerno, that the fund would earn  
16 management fees -- excuse me. That  
17 Sport-BLX would earn management fees or  
18 would manage a fund?

19 A. This is not all encompassing of  
20 what was told to me.

21 Q. My question was, where did it  
22 say there --

23 MR. PEARLSON: Easy. Easy.

24 MR. SACK: No. He's not  
25 answering questions.



1

2 Q. Where does it say there that  
3 Sport-BLX --

4 MR. PEARLSON: There's still  
5 now -- Jonathan, there's still no  
6 need to raise your voice. Okay?

7 Q. Where does it say there that  
8 Sport-BLX would be earning management fees  
9 from managing a fund?

10 A. Again, this is not all  
11 encompassing and it does not say that here.

12 Q. Look at number 11, Mr. Salerno.  
13 "Given our background as financial  
14 investors, we try to model the revenue and  
15 earnings of business" --

16 A. I'm not seeing.

17 Q. Number 11.

18 A. On top, okay.

19 Q. "Given our background as  
20 financial investors, we try to model the  
21 revenue and earnings of the business. The  
22 realty is, we do not have enough variables  
23 sorted out at this point to get any  
24 semblance of accuracy."

25 Did they -- they were telling

1  
2 you there they couldn't model any revenues  
3 at that point, whether from a fund or  
4 otherwise, correct?

5 A. Can I read this whole thing,  
6 please?

7 Q. Please. Go ahead.

8 A. Okay.

9 Q. Does this document say anything  
10 about management of a fund or revenue for  
11 management of fund go into Sport-BLX?

12 A. This document says at this  
13 point in this document, it does not speak  
14 to revenues.

15 Q. And does it speak to fund?

16 A. It does not speak to -- it does  
17 not use the word "fund" here.

18 Q. Does it speak to the concept of  
19 the fund? Can you see anything here that  
20 reflects what you just described about the  
21 existence of a fund, the management of a  
22 fund or fees from a fund?

23 A. Yes.

24 Q. Where?

25 A. Also on the --

1

2 Q. What section is it?

3 A. The second -- I'm just looking  
4 at number 11. I have not reviewed the  
5 other document -- the whole document with  
6 regard to your question. Only with number  
7 11.

8 Q. I asked you to look at the  
9 whole document. You said you were going to  
10 look at the whole document. I'm asking you  
11 about the whole document.

12 Does that document anywhere say  
13 that Sport-BLX had a fund -- excuse me.  
14 That Sport-BLX anticipated revenue from  
15 managing a fund in any way?

16 A. I'll answer the question with  
17 number 11 first, and then if you give me  
18 time, I'll look at the rest of the  
19 document, because I don't recall the  
20 document in its entirety.

21 "Also, it is worth emphasizing  
22 that our current conception of our revenue  
23 model is to charge fees for initial  
24 offerings and trades -- and all trades."

25 Initial offerings would come

1  
2 from a fund, because the fund would own the  
3 athlete and the other sport assets. So  
4 that would be a reference to the fund.

5 Q. It could also be a reference to  
6 a platform, correct, for acting as the  
7 executing trades on initial offerings,  
8 correct?

9 A. It doesn't say executing, sir.

10 Q. Well, charge fees for initial  
11 offerings.

12 A. Right.

13 Q. It's very different from  
14 management fees, isn't it?

15 A. It doesn't say executing. I  
16 don't think management fees would be  
17 far-fetched to be germane with initial  
18 offerings in all trades.

19 Q. So you think number 11 is  
20 referring to fees to a -- for a fund that  
21 Sport-BLX was to manage?

22 A. I think that number 11 is  
23 giving an example of the process, which  
24 includes a fund, which will purchase an  
25 asset, which will then have an initial

1

2 offering and then have multiple trades.

3 Q. Look at number 12, please.

4 A. Can I look at the rest of the  
5 document?

6 Q. You may.

7 A. So from the first page --  
8 excuse me. From the first page, number 1  
9 also implies that a fund will be a part of  
10 Sport-BLX in the creating of factual  
11 interests representing revenue shared  
12 interests in the future earnings of an  
13 athlete or equity ownership in racehorses  
14 and teams.

15 Q. You're saying -- please go  
16 ahead.

17 A. In my opinion, when I read  
18 this, you cannot create fractional  
19 interests unless you own it. So Sport-BLX  
20 needed to own the asset in which it's  
21 speaking to here that's fractionalized.

22 Q. What's the basis for your  
23 opinion? You don't know anything about  
24 this business, do you? What's the basis  
25 for your opinion of what creating

1  
2 fractional interest means?

3 A. From what was told to me prior  
4 to investing.

5 Q. So what you were told was one  
6 of the primary expected revenue sources  
7 from Sport-BLX was the management of a  
8 fund, but the words "managing a fund" never  
9 appears in the FAQs. Do you agree with  
10 that statement?

11 A. No. I don't agree.

12 Q. Show me the words "managing a  
13 fund" --

14 A. You said FAQs. I can only  
15 speak to the one in front of me.

16 Q. That's the one I'm talking  
17 about. Do the words "managing a fund,"  
18 creating or managing a fund appear in this  
19 document?

20 A. So far going down page 1.

21 MR. PEARLSON: Jonathan,  
22 perhaps to move things along, we can  
23 stipulate the document says what it  
24 says, and the words "managing a fund"  
25 do not appear in the document.

1

2 Q. Do you agree with that,

3 Mr. Salerno --

4 THE WITNESS: I'm going to read

5 it. You want me to read it or you

6 don't?

7 MR. PEARLSON: We can stipulate

8 the document says what it says and

9 doesn't use the words "managing a

10 fund" anywhere in the document.

11 THE WITNESS: If the document

12 doesn't say that, then we can

13 stipulate to that. Okay.

14 Q. Turn to number 12 on 1610.

15 "Given Clinton Group's longstanding

16 position as an SEC registered investment

17 advisor, we have taken a rigorous approach

18 to SEC compliance. At present, their

19 strategy relies on the following findings,

20 that these tokens in our system are, in

21 fact, securities, and that we will access

22 certain exemptions for registration and

23 resale under SEC regulations."

24 So is it fair to say,

25 Mr. Salerno, that you understood when you

1

2 invested that the intention was for  
3 Sport-BLX to be totally compliant with  
4 applicable SEC regulations and laws?

5 A. I think it's fair to say that I  
6 believe that Sport-BLX would be compliant  
7 with all laws, including SEC, yes.

8 Q. And do you think -- did you  
9 think that the SEC would allow a large  
10 investment fund that took positions in  
11 assets to also own the trading platform  
12 where those assets would be traded?

13 A. I didn't contemplate it to that  
14 extent. I relied on what was represented  
15 to me that they would.

16 Q. But you were a registered  
17 investment advisor. You had some basic  
18 understanding of conflicts of interest in  
19 the securities markets, didn't you?

20 A. I am a registered investment  
21 advisor. For technical things, such as  
22 that, I rely on counsel.

23 Q. You thought -- can you think of  
24 a single example where an investment fund  
25 owns the trading platform where the assets



1

2 it owns trades?

3 A. Yes.

4 Q. What's that?

5 A. What's the investment?

6 Q. What's the fund -- what fund

7 owns what trading platform?

8 A. Principal.

9 Q. What's Principal?

10 A. Principal Financial.

11 Q. What exchange does it own?

12 A. They own a recordkeeping  
13 platform which allows exchanges and trades  
14 to take place, and they also have  
15 proprietary funds that trade on it.

16 Q. Do you know of any other?

17 A. Transamerica.

18 Q. Is that -- what assets trade  
19 there? What assets -- what's --

20 A. I'm not following.

21 Q. What's Transamerica?

22 A. Transamerica is another  
23 financial institution that owns a  
24 recordkeeping and trading platform that  
25 have proprietary funds that are allowed to

1

2 trade on their platform.

3 Q. Allowed to trade by the SEC?

4 A. Yes.

5 Q. And --

6 A. Numerous others.

7 Q. And you thought that's what  
8 Henry Sullivan and Mike Staisil were saying  
9 to you, that they were going to be -- that  
10 Sport-BLX would be creating and managing a  
11 fund and trading on its own platform?

12 A. Not just Michael Staisil and  
13 Henry Sullivan, but Mr. De Perio and  
14 Mr. Hall, and that was the whole business  
15 model until all of a sudden George Hall  
16 changed his mind and Joe De Perio changed  
17 his mind and it wasn't.

18 MR. SACK: Let's take a look at  
19 -- we'll go to the January 14th one,  
20 Joe.

21 Q. It's an e-mail from Henry  
22 Sullivan to you, dated January 14th. It's  
23 at Sport-BLX-147207 is the e-mail, and then  
24 the attachment is 147208 through 229. This  
25 is a deck for Sport-BLX that you received

1

2 on or about January 14, 2019. Was this one  
3 of the decks you were referring to a few  
4 moments ago about receiving Sport-BLX's  
5 decks?

6 A. I would assume it's one of  
7 them, yes.

8 Q. Does it look familiar to you?

9 A. It does.

10 Q. Please take a look through it,  
11 but I'll direct you to certain pages.

12 A. Okay.

13 Q. Take a look at page 12, which  
14 is at 147220.

15 A. Yes.

16 Q. The top of the page says,  
17 "Sport-BLX will take a small fee for each  
18 tokenization and each trade transaction."  
19 And then there's a diagram and a discussion  
20 of percentages of on boarded product and  
21 percentage of every trade. Is there any  
22 reference there to having a fund or  
23 managing a fund?

24 A. Not on this page.

25 Q. In fact it talked about small

1  
2 fees for each transaction, not substantial  
3 fees, correct?

4 A. It does say the word "small  
5 fee," yes.

6 Q. Take a look at the next page,  
7 page 13, 147221. The caption is creating  
8 an ecosystem. In the block on the  
9 right-hand side it says, "Sport-BLX will  
10 build connections to companies with diverse  
11 competencies."

12 Could you read the page, tell  
13 us whether there's any reference there to  
14 owning or managing or making money from a  
15 fund?

16 MR. PEARLSON: John, I'm going  
17 to object. The page says what it  
18 says. You're entitled to do your  
19 deposition any way you want, but  
20 there are a lot of pages that don't  
21 say things too.

22 Q. Do you see anything in this  
23 document, Mr. Salerno, that confirms what  
24 you said earlier, that Sport-BLX would own  
25 or manage or make fees from a fund?

1

2 A. This document --

3 Q. You referred to documents,

4 that's why I'm asking.

5 MR. SACK: He's referred to  
6 documents he received. I'm trying to  
7 understand.

8 MR. PEARLSON: I understand.  
9 My point was just you don't have to  
10 go through every single page and say  
11 does it say this anywhere.

12 A. So can you repeat the question  
13 now so I can answer you directly.

14 MR. SACK: Can I have that  
15 back, Hindy.

16 (Whereupon, a portion of the  
17 testimony was read back.)

18 A. So in this particular document  
19 that you just handed to me -- and I'm  
20 trying to go through it, I have not had a  
21 chance to go through the whole thing.  
22 However, in a brief review of it, I do see  
23 a reference to the fund on page 15. The  
24 top of it says institutional investor  
25 relationship, and it references proprietary

1

2 sources. "A third-party can have a pool of  
3 risk capital aggregated from proprietary  
4 sources."

5 When it says "proprietary  
6 sources," that, to me, means Sport-BLX.

7 Q. Really? It says a third-party  
8 can have a pool of risk from proprietary  
9 sources. So it's really talking about a  
10 third-party would have these assets, isn't  
11 it?

12 A. No. And again, this is -- you  
13 put it in front of me, I'm reading it. I  
14 -- when it says "from proprietary sources,"  
15 I believe it's referencing back to the  
16 first bullet, where it says Sport-BLX.

17 Q. You're inferring that  
18 proprietary sources or investors means  
19 Sport-BLX? Is that what you're saying?

20 A. I'm inferring that when it says  
21 proprietary sources, it's referring to  
22 Sport-BLX.

23 Q. It doesn't say it, but that's  
24 your inference?

25 A. That is what I believe it says,

1

2 yes.

3 Q. So thus far, Mr. Salerno,  
4 you've referred to meetings with Mike  
5 Staisil, Henry Sullivan, George Hall and  
6 Joe De Perio, is that right?

7 A. Yes.

8 Q. And did you discuss the  
9 financial projections for the company,  
10 including projected revenues if the  
11 business succeeded and projected expenses  
12 with any of the people that we just  
13 identified?

14 A. I'm sure I did.

15 Q. And could you pinpoint any  
16 meetings or conversations before February  
17 28th, where you talked about the financial  
18 -- the financials of the company?

19 A. I don't recall timeline.

20 Q. And who did you have  
21 conversations with the financial -- about  
22 the financials with?

23 A. I spoke to George Hall about  
24 financials. I spoke to Joe De Perio on  
25 financials. I spoke to Henry Sullivan

1

2 about financials, I spoke to Francis  
3 Ruchalski about financials.

4 Q. Who?

5 A. Francis Ruchalski, the CFO, and  
6 Michael Staisil.

7 Q. Can you tell us, what did you  
8 learn about the financials in those  
9 meetings?

10 A. That they were modeled out  
11 after a great deal of due diligence by  
12 Mr. Hall and Mr. De Perio and that they  
13 were the basis for the business to go  
14 forward.

15 Q. And they modeled out expenses,  
16 as well?

17 A. They did.

18 Q. Did you have questions about  
19 the financials?

20 A. I'm sure I did.

21 Q. Did you have concerns about  
22 them?

23 A. I asked questions. If a  
24 question is also a concern, then same  
25 definition, then yes.



1

2 Q. What questions did you ask?

3 A. I don't recall.

4 Q. Do you recall any questions you  
5 asked about any aspect of the financial  
6 projection of the company?

7 A. I don't recall specifically,  
8 no.

9 Q. No subject comes to mind that  
10 came to your attention and stood out from  
11 any other?

12 A. Yes.

13 Q. What?

14 A. Whether or not it was  
15 reasonable estimates that they were making.

16 Q. Reasonable estimates of what?

17 A. Of the overall pro forma. The  
18 overall revenues relative to the overall  
19 expenses.

20 Q. Who did you ask that of? Were  
21 these -- withdrawn.

22 So what you were asking was did  
23 these individuals believe -- believe they  
24 were reasonable projections, is that the  
25 substance of what you were asking?

1

2 A. I would agree with that.

3 Q. And who did you ask that

4 question of?

5 A. I remember having that  
6 conversation with Mr. De Perio mostly.

7 Q. His name is De Perio, by the  
8 way. Can you do a little -- his name is De  
9 Perio, you've seen it in many documents.

10 A. Okay. No disrespect.

11 Q. You had those conversations  
12 with Mr. De Perio. Who else?

13 A. Mr. Hall.

14 Q. And what did they tell you?

15 A. They told me that they believed  
16 in the pro forma numbers.

17 Q. You understood this was an  
18 extremely high risk venture?

19 A. Yes.

20 Q. A high risk of failure?

21 A. High risk of failure and  
22 reward, yes.

23 Q. It was a startup company that  
24 might reasonably completely fail, correct?

25 A. That was a possibility.

1

2 Q. So this was just the best  
3 educated guesses that Mr. De Perio and  
4 Mr. Hall could give at a given point in  
5 time, correct?

6 MR. PEARLSON: I'm sorry.

7 Objection to form.

8 Go ahead.

9 Q. Did you understand their  
10 responses to be their best educated guesses  
11 that they could give in this early 2019  
12 period, is that a fair statement?

13 A. The statement I would make is I  
14 trusted what they put on paper was  
15 accurate.

16 Q. And you trusted when they put  
17 on paper, that given our background as  
18 financial investors, we tried to model the  
19 revenue and earnings of the business. The  
20 reality is that we don't have enough  
21 variables sorted out at this point to get  
22 any semblance of accuracy. Was that one of  
23 the statements they made to you in  
24 substance? This is from the FAQs -- that  
25 you relied upon?

1

2 A. However, that FAQ was prior to  
3 the pro forma being provided.

4 Q. Well, you said you relied on  
5 the FAQ when you invested, isn't that  
6 right? That was all before February 28th.  
7 It was part of the mix of information that  
8 you had when you invested, correct?

9 A. It was a part of the  
10 information, yes.

11 Q. This pro forma, you reviewed it  
12 in the data room?

13 A. I'm sorry. Rephrase the  
14 question.

15 Q. Did you review data in the data  
16 room that you were given access to?

17 A. No.

18 Q. You didn't go into the data  
19 room and look at any of the data?

20 A. Yes.

21 Q. You did go into the data room,  
22 correct?

23 A. I went into the data room, I  
24 downloaded the information and I reviewed  
25 it in my office.

1

2 Q. Did you look at, to the best of  
3 your knowledge, all of the information in  
4 the data room?

5 A. I don't think I looked at all  
6 of the information, no.

7 Q. But you had access to all of  
8 the information in the data room, correct?

9 A. I had access to whatever was in  
10 the data room, yes.

11 Q. And you printed out a  
12 substantial volume of material, correct?

13 A. Yes.

14 Q. And included in that material  
15 were the projected financials of the  
16 company, budgeted forecast revenue,  
17 expenses, capital expenses and the like?

18 A. Yes.

19 Q. Did you talk with anyone, other  
20 than individuals with Sport-BLX, about the  
21 information you were receiving and  
22 reviewing?

23 A. Yes.

24 Q. With whom?

25 A. My counsel.

1

2 Q. Who is that?

3 A. That was Giordano Halleran.

4 Q. Philip Forlenza, that firm?

5 A. Yes, I believe so.

6 Q. With whom else?

7 A. That's it.

8 Q. Did you talk to David Roth  
9 about the information?

10 A. I don't think so.

11 Q. Did you talk with David Roth  
12 about the decision of whether to invest in  
13 Sport-BLX?

14 A. No.

15 Q. So your attorneys wrote to the  
16 Court saying that you spoke with one of the  
17 LPs of Cypress about the decision to invest  
18 in Sport-BLX. Is that statement incorrect?

19 A. I'm not sure that they said  
20 that.

21 Q. Let's look for it.

22 MR. SACK: Okay. So I guess  
23 we're up to 15, Exhibit 15.

24 Q. I'll point you to the right  
25 place.

1

2

3

4

5

I'm going to direct you to page 5 of this letter, Mr. Salerno, and I'm just going to explain to you, procedurally, what it is.

6

7

MR. SACK: This is Exhibit 15, Hindy.

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Q. So I'm going to explain to you, procedurally, what it is. It's a letter that is submitted on the letterhead of my firm, but it combines information provided both by my firm and your counsel, and it presented an issue to the Court regarding getting discovery about the LPs. Do you recall that issue came up in this case?

17

18

19

Q. And you were opposed to providing any information about Cypress's limited partners?

20

21

22

23

24

25

A. Yes.

Q. So at the top of page 5, the last sentence of the carryover paragraph begins, "Based on Mr. Salerno's representation that he only discussed a potential Sport-BLX investment with one of

1

2 Cypress's limited partners, his accountant,  
3 the Cypress parties are willing to disclose  
4 the identity of that limited partner."

5 Is that an incorrect statement?

6 A. No. That's correct.

7 Q. Okay. So you did speak with  
8 potential Sport-BLX investment with one of  
9 Cypress's limited partners, your  
10 accountant, is that accurate?

11 A. Right.

12 Q. Who is that?

13 A. Dave Roth.

14 Q. So what did you speak with  
15 Mr. Roth -- first of all, when did you  
16 speak with Mr. Roth about your investment  
17 in Sport-BLX?

18 A. Mr. Roth is Cypress's  
19 accountant. He knew about the investment  
20 after I made the investment. I'm trying to  
21 think if there was any particular detail of  
22 the Sport-BLX investment that was  
23 communicated to Mr. Roth prior to, other  
24 than the dollar amount and name that we  
25 made the investment into.



1

2           Q.       You didn't speak with him about  
3 any of the financial information you've  
4 reviewed in connection with the investment,  
5 is that right?

6           A.       I did not -- no.

7           Q.       Anything else about the  
8 company? Did you speak with him before  
9 making the investment?

10          A.       No.

11          Q.       Is he your accountant, as well?

12          A.       He is.

13          Q.       I think -- I asked you a few  
14 moments ago whether any questions or issues  
15 stood out from the financial information  
16 you were reviewing before you made the  
17 investment, and I'm just trying to  
18 paraphrase here. I believe you said the  
19 one that stood out was whether George and  
20 Joe believed in the projections that were  
21 being conveyed to you.

22                   Did I get that accurately,  
23 Mr. Salerno?

24          A.       My concern was whether or not  
25 they were reasonable projections, and they

1

2 -- and they were reasonable and truthful,  
3 yes.

4 Q. And they told you, in  
5 substance, they believed they were  
6 reasonable projections?

7 A. Yes.

8 Q. And you understood they could  
9 not make any predictions or guarantees  
10 because this was an extremely high risk  
11 venture. Is that a fair statement?

12 A. That's a fair statement.

13 Q. Is there any other subject  
14 matter or concern or issue that you recall  
15 from reviewing those financial statements  
16 that you talked about before making your  
17 investment?

18 A. No. Not as I sit here today.

19 Q. Did you convey to Sport-BLX  
20 that you would be the investor in  
21 Sport-BLX?

22 A. Me, as a person? Or me, as an  
23 investor? I made it clear to them that I  
24 was investing in Sport-BLX.

25 Q. As -- so that Michael Salerno

1

2 would be the investor in Sport-BLX, is that  
3 what you made clear to them?

4 A. I also told them that I would  
5 be doing it through Cypress.

6 Q. When did you tell -- who did  
7 you tell that to?

8 A. George Hall, Joe De Perio, Mike  
9 Staisil, Henry Sullivan.

10 Q. When did you tell them that?

11 A. The first reference was at  
12 George Hall's house, when I told him that I  
13 had a company that I invest through, which  
14 is Cypress.

15 Q. Were you asked any questions  
16 about what Cypress was and who else  
17 invested in Cypress?

18 A. No.

19 Q. Any other times you can recall  
20 saying that you were going to invest  
21 through Cypress?

22 A. It was in regular conversation,  
23 communication, if it came up. It wasn't an  
24 agenda item.

25 MR. SACK: Let's go to February

1

2 1 e-mail, Joe.

3 Q. Mr. Salerno, this is an e-mail  
4 from Joe De Perio to you, CCing others, on  
5 February 1, 2019. You can take a look at  
6 it. And there are several attachments.  
7 They're the two stock purchase agreements  
8 and a side letter and a cover e-mail, as I  
9 mentioned.

10 I'm really only going to ask a  
11 few questions about this. If you really --  
12 if you need to look at the documents, I'm  
13 not going to deprive you of that  
14 opportunity. But I really only have a few  
15 questions.

16 If you take a look at the two  
17 stock purchase agreements and the side  
18 letter, I think you could see in the very  
19 first paragraph they identify the purchaser  
20 as Michael M. Salerno, and then in the side  
21 letter, it also identifies -- it's an  
22 agreement among you and others. You're not  
23 referred to as purchaser, but it's a  
24 stockholder agreement among you and others.  
25 You, being Michael M Salerno.

1

2                   So when you got this agreement,  
3 did you see that it was mistaken, that it  
4 should say Cypress?

5           A.       At some point I noticed it and  
6 I let everyone know.

7           Q.       So as of February 1, you knew  
8 you were investing through Cypress, is that  
9 right?

10          A.       Yes.

11          Q.       Did you -- was Cypress an  
12 accredited investor as of February 1?

13          A.       Yes, to my knowledge.

14          Q.       How much money is needed to be  
15 an accredited investor for an entity like  
16 Cypress?

17          A.       I think there's multiple ways  
18 for it to be an accredited investor.

19          Q.       There are. Can you name any of  
20 them?

21          A.       I'll rely on my counsel to  
22 guide me here, our RIA counsel.

23          Q.       You don't know what any of the  
24 requirements are, as you're sitting here  
25 now, for an entity to invest as an

1  
2 accredited investor?

3 A. I believe I remember reading  
4 that one of the many ways to be an  
5 accredited investor is to have more than 5  
6 million dollars -- I'm sorry. No. That's  
7 wrong. 5 million dollars of assets.

8 Q. So I'm going to represent to  
9 you, based on the Cypress document that was  
10 produced by your counsel, that as of  
11 February 4, Cypress had 4.355 million  
12 dollars. So was it an accredited investor  
13 at that time?

14 A. Yes.

15 Q. Why?

16 A. From -- one of the other  
17 reasons -- and also -- what are you looking  
18 at? Are you looking at the cash holdings  
19 or are you looking also at the balance  
20 sheet?

21 Q. Why don't I show you. This was  
22 produced by your counsel. Let's take a  
23 look at that document.

24 MR. SACK: This will be now  
25 Cypress Exhibit 15 -- 17, Salerno.

1

2 A. I'm sorry. I can't read this.

3 Look at the size of that -- I don't know if

4 you can read that. Can you read that?

5 Q. If I look at it very closely, I

6 can?

7 A. Can I see yours instead?

8 Q. Sure. We can share this one.

9 MR. PEARLSON: Can the rest of

10 us get the exhibit first.

11 THE WITNESS: Good luck.

12 Q. So what this document shows,

13 Mr. Salerno, is --

14 MR. PEARLSON: What page are

15 you on, John? We have two pages.

16 MR. SACK: It's combined. It's

17 3456 to 57.

18 MR. PEARLSON: It's on one

19 sheet in the exhibit you're showing

20 him?

21 MR. SACK: Yes. I pasted them

22 together.

23 MR. SPIRO: This is how you

24 produced it. So don't look at us.

25 MR. PEARLSON: I'm not saying

1

2 anything, other than I just want to  
3 be clear that we're all on the same  
4 page.

5 Q. I will represent to you that I  
6 did the math and checked the math and that  
7 as of February 4th, the reported  
8 investments in this document were 4.35  
9 million dollars, and as of February 19, it  
10 became 5.4 million dollars.

11 So I'll just simply ask if you  
12 know, was Cypress an accredited investor as  
13 of February 1, when you were getting these  
14 draft documents from Mr. De Perio?

15 A. Yes, I believe it was.

16 Q. Based on what? What made it an  
17 accredited investor?

18 MR. PEARLSON: Objection.

19 Calls for a legal conclusion.

20 You can answer.

21 Q. I'm asking for your  
22 understanding, Mr. Salerno, as the general  
23 partner of this fund.

24 A. Can we start with, first, this  
25 is a deposit log. This is not a balance



1  
2 sheet. This only shows the cash that has  
3 been received. It does not show the  
4 accounts receivable of the investors that  
5 monies came in afterwards. So the balance  
6 sheet would have -- if you're looking for  
7 them to be over 5 million, if you added the  
8 accounts receivable, then it would be over  
9 5 million. This is only a deposit log.

10 Q. You had people -- there were  
11 accounts receivable because investors had  
12 committed to investing by then?

13 A. That's correct.

14 Q. So your best understanding is  
15 that as of February 1, Cypress was  
16 accredited, fully qualified to invest in  
17 Sport-BLX, and that you had made the  
18 decision that it would invest in Sport-BLX,  
19 is that correct?

20 A. That it would?

21 Q. Yes.

22 A. Yes.

23 Q. And so when you got these  
24 documents from Mr. De Perio, did you notice  
25 the mistake, that it said Michael Salerno,

1  
2 purchaser, in both stock purchase  
3 agreements and referred to Michael Salerno  
4 in the side letter?

5 MR. PEARLSON: Objection to  
6 form.

7 A. At some point I did. When I  
8 first got the documents, I just flipped  
9 them over to counsel. And candidly, I  
10 really never read the first paragraph  
11 because that's stuff that's not that  
12 important. It's the terms, to me, that I  
13 need to make sure is right. And the names  
14 and the Delaware and the New Jersey, those  
15 things, that's easily always corrected.

16 Q. Were you involved in  
17 negotiating -- withdrawn.

18 Were you involved in reviewing  
19 the terms of these agreements and proposing  
20 changes and additions?

21 A. With counsel, yes.

22 Q. What was your -- how would you  
23 characterize your involvement?

24 A. Counsel reviewed it, counsel  
25 made recommendations. I would take those

1  
2 recommendations, and then I would forward  
3 them on to Mr. De Perio -- how do I say it?  
4 De Perio. Mr. De Perio.

5 Q. And there was a series of  
6 iterations of this document, is that right?  
7 Of these documents, excuse me.

8 A. Yes.

9 Q. So you, after receiving the  
10 document on February 1, did you convey to  
11 Mr. De Perio or anyone else, or did your  
12 lawyer convey to Mr. De Perio or anyone  
13 else, that the identity of the purchaser  
14 should be different?

15 A. Yes, I'm sure we did at some  
16 point, because the documents were  
17 corrected.

18 Q. Let's look at another version  
19 of these documents, February 6. By the  
20 way, did your lawyer know who the investor  
21 was going to be?

22 A. Sure.

23 Q. Through this period, as of  
24 February 1, correct?

25 A. I don't --

1

2

MR. PEARLSON: Objection. I

3

don't want you going into what your

4

lawyer knew and didn't know based on

5

conversations you had with your

6

lawyer.

7

Q. Let me ask you this, and I'm

8

not asking for the substance. Did you give

9

your lawyer all material information about

10

this investment so that he could propose

11

changes or additions to the agreements?

12

MR. PEARLSON: Objection to

13

form.

14

A. My concern is what you define

15

as "material."

16

Q. Do you think the owner, the

17

purchaser of the stock, and the party to

18

the side letter is a material term?

19

A. No. Not really.

20

Q. Why not?

21

A. Because multiple -- that's

22

really not a very relevant point, whether

23

it be Michael Salerno or Cypress or NPPG

24

Holdings or XYZ. To me, that's really

25

irrelevant.

1

2 Q. Wouldn't it be material to  
3 Sport-BLX?

4 A. If it was, they should have  
5 asked me.

6 Q. Well, the document said Michael  
7 Salerno, and you didn't correct it until  
8 the very last minute. Weren't you  
9 conveying to them that you were the  
10 individual investor?

11 MR. PEARLSON: Objection to  
12 form. Argumentative.

13 A. No. No. I had already told  
14 them that it was Cypress. And even -- when  
15 they knew it, they never asked me once.

16 Q. Let's take a look at the  
17 February 6 documents. These are documents  
18 that Joe De Perio sent to you after a round  
19 of edits suggested by you and your lawyer.  
20 And do you see here that the documents  
21 still list you as the purchaser and the  
22 party to the side agreement?

23 A. This looks like the same  
24 document, the same e-mail.

25 Q. Maybe we're mixing these up.

1

2

MR. SACK: Joe, could you come

3

around for a second? Just make sure

4

Mr. Salerno only has the February --

5

A. What I'm saying is it's --

6

yeah, it's the same e-mail, it's just one

7

more string of it.

8

Q. Correct. It's just the top

9

e-mail indicates that the document's been

10

turned, based on edits, that you and your

11

attorney have given to others, to Mr. De

12

Perio, do you see that?

13

A. No.

14

Q. This is a top e-mail from Joe

15

to you. "Mike, as per the e-mail exchange,

16

please see a revised set of docks enclosed.

17

I added the red lines of what changed.

18

Looking forward to our meeting tomorrow."

19

Do you know, why didn't -- any

20

understanding of why neither you nor your

21

lawyer conveyed in this first turn of the

22

document why the purchaser should be

23

Cypress Holdings versus Mike Salerno?

24

MR. PEARLSON: Again, I just

25

want to caution the witness not to

1

2 reveal conversations with counsel.

3 If you can answer it other than

4 that, go ahead.

5 A. I don't recall. It wasn't  
6 important to us. It wasn't important to  
7 Sport-BLX, Joe De Perio or George Hall.

8 Q. Mr. Salerno, the documents  
9 ended up getting signed and finalized on  
10 February 28th. So between February 6th,  
11 the version and the e-mail you just saw,  
12 and February 28th, did you have  
13 conversations and e-mails about the  
14 versions of the document with your lawyer  
15 and with Mr. De Perio?

16 A. Yes.

17 Q. And what did these  
18 conversations concern?

19 A. Changes to the terms.

20 Q. Any terms come to mind that  
21 were of significance to you?

22 A. No, I don't recall any that pop  
23 out.

24 Q. I'm going to show you a set of  
25 e-mails. The set of e-mails that you

1

2 forwarded to Joe De Perio on February 19  
3 has a back and forth between you and your  
4 lawyer, Mr. Forlenza, and I want to direct  
5 your attention to an exchange there.

6 Take a look at the chain, but I  
7 really want to direct you to -- let me  
8 identify, Exhibit 19 is Sport-BLX 148275 to  
9 148285. And I'm going to direct you to an  
10 e-mail 148277. It's an e-mail from Philip  
11 Forlenza to Mike Salerno, February 12th at  
12 10:41 a.m.

13 MR. SACK: We have this, Ross,  
14 because it was forwarded during the  
15 negotiations to Mr. De Perio.

16 Q. Do you see there, Mr. Salerno,  
17 where your lawyer asks, number 1, why are  
18 there two stock purchase agreements with  
19 different pricing? Do you see that?

20 A. Yeah.

21 Q. And you write, "I am investing  
22 500K at 9.5 million and 500K at 25 million  
23 with downside protection, et cetera." You  
24 write to your own lawyer that, "I am  
25 investing." You don't say anything about



1

2 Cypress there, do you?

3 A. When, in this context, I am  
4 synonymous with Cypress.

5 Q. Really?

6 A. Really.

7 Q. That's what Dennis Nathan  
8 thinks, "I" is synonymous with Cypress?

9 A. I'm sorry. What about Dennis  
10 Nathan?

11 Q. He's one of the limited  
12 partners. Do the limited partners think,  
13 "I, Michael Salerno," is synonymous with  
14 Cypress?

15 A. This is an e-mail with respect  
16 to my conversation with Philip Forlenza.  
17 He is who I'm talking to, not Dennis  
18 Nathan.

19 Q. I understand. But you said "I  
20 am synonymous with Cypress"?

21 A. I believe I said -- can you  
22 read it back? I think I said in the  
23 context of this e-mail.

24 Q. Whatever.

25 You didn't say Cypress is

1

2 investing. You said here "I am investing,"  
3 correct?

4 MR. PEARLSON: Objection. The  
5 document says what it says.

6 Q. You're saying Mr. Forlenza knew  
7 it was Cypress by this time?

8 A. I don't exactly know the  
9 timeline, but I would believe, yes.

10 Q. Next page.

11 A. Forward or back?

12 Q. Forward. It's 148278. There's  
13 a question number 4, "Do you want to  
14 request tagalong rights -- do you want to  
15 request tagalong rights so that you can  
16 participate in a sale if the founders  
17 decide to sell their shares," and you wrote  
18 "Yes," correct?

19 A. Yeah. That's what it says.

20 Q. And so you asked -- it was at  
21 your lawyer's request -- at your lawyer's  
22 suggestion and your agreement that a  
23 tagalong rights provision was put into the  
24 stock purchase agreements, is that correct?

25 A. From my understanding, tagalong

1

2 rights are in the stock purchase agreement,  
3 yes.

4 Q. And what was the initiative for  
5 putting tagalong rights into the stock  
6 purchase agreement?

7 MR. PEARLSON: I just want to  
8 caution the witness again, to the  
9 extent you're getting into legal  
10 advice with your counsel, if there's  
11 another reason independent of that,  
12 you can go ahead and answer.

13 MR. SACK: The e-mail is right  
14 here. To that extent, there's been a  
15 waiver by sending it to Mr. De Perio.  
16 I'm just asking about these  
17 communications.

18 MR. PEARLSON: No. No. That's  
19 not a waiver of attorney/client  
20 privilege by him, just generally  
21 saying do you want to request it.  
22 The substance of the advice is  
23 privileged.

24 MR. SACK: I'll try to rephrase  
25 the question.

1

2 Q. Did you, Mr. -- what were  
3 tagalong rights in the versions of the  
4 agreement that had been provided to you,  
5 Mr. Salerno?

6 A. I don't recall. The tagalong  
7 rights are in the agreement.

8 Q. And were they at your request  
9 that they were added to the agreement?

10 A. I don't recall.

11 Q. Do you recall whether it was  
12 you or your lawyer who suggested the  
13 language for the tagalong rights that went  
14 into the agreement?

15 A. I don't.

16 Q. You were comfortable with the  
17 tagalong rights that made their way into  
18 the agreement?

19 A. In retrospect, no.

20 Q. I didn't -- no, I didn't ask  
21 you in retrospect, Mr. Salerno. In -- when  
22 the agreement was signed on February 28th,  
23 were you comfortable with the tagalong  
24 rights that were in the stock purchase  
25 agreement?

1

2           A.       When I signed it, I was  
3       comfortable with the documents, that that  
4       would include everything in it, including  
5       the tagalong rights, yes.

6           Q.       And did the tagalong rights  
7       come into the document at your request?

8                   MR. PEARLSON:   Asked and  
9       answered.

10          A.       I don't recall.

11          Q.       Did you have the opportunity to  
12       revise and edit the tagalong rights  
13       provision?

14          A.       That would have been subject to  
15       negotiation, I guess.

16          Q.       Was it negotiated or did you  
17       get the language you wanted in the  
18       agreement?

19          A.       I don't recall how we ended up  
20       with the final language.

21          Q.       Did George or Joe suggest that  
22       you have tagalong rights?

23          A.       I don't recall.

24          Q.       They may have, you're saying?  
25       You're saying it may have been at their

1

2 suggestion that you have tagalong rights?

3 A. Actually, let me back up. At

4 what point in time? Because George

5 actually did specifically state that I

6 would have tagalong rights and every other

7 shareholder would, as well.

8 Q. We're talking about this

9 agreement in February of 2019.

10 A. Okay.

11 Q. We're talking about the

12 negotiation of the agreement leading up to

13 February 28th. Did George and Joe make the

14 suggestion that you have tagalong rights?

15 A. I don't recall in February, in  
16 this agreement, who initiated the tagalong  
17 right clause.

18 Q. It may have been George and  
19 Joe, is what you're saying?

20 A. It may have been.

21 Q. Let's go to the February 28th  
22 e-mail. So I'm going to ask you questions  
23 about the top e-mail. And that's dated  
24 February 28, 2019 at 11:09 a.m. from Joe De  
25 Perio to Michael Salerno, copy George Hall.

1

2 And that e-mail says, "Mike, enclosed  
3 reflects the red lines and what should be  
4 execution versions based on an acceptance  
5 of your two outstanding points below." And  
6 then these e-mails talk about certain  
7 points that you've raised.

8

What I'd like to do is turn  
9 your attention to one of the stock purchase  
10 agreements. You would agree, Mr. Salerno,  
11 that the stock purchase agreements are  
12 identical except for the number of shares  
13 and the share price?

14 A. They should be. Number of  
15 shares, share price, yes.

16 Q. And I'll direct you to -- let's  
17 look at Sport-BLX 16300, tagalong rights,  
18 that is the bottom of the page, paragraph  
19 4, subpart H.

20 A. What page? I'm sorry.

21 Q. 16300. Before we go there,  
22 let's go to the front of the document. And  
23 again, at 11:09 a.m., the version of the  
24 document still has Michael M. Salerno as  
25 the purchaser, and the side agreement still

1

2 lists Michael M. Salerno as one of the  
3 parties to the agreement.

4 And so now I'll have you turn  
5 to the tagalong rights at 16 -- 16300.

6 And were those the tagalong  
7 rights -- take a look at that. Is that  
8 what you negotiated and agreed upon with  
9 Sport-BLX?

10 MR. PEARLSON: John, you're  
11 asking whether this is what appeared  
12 in the execution version?

13 MR. SACK: I'm just asking for  
14 the substance. Is this what  
15 Mr. Salerno negotiated -- it did, it  
16 didn't change. I'm just asking for  
17 whether this was what he agreed to in  
18 the stock purchase agreements.

19 A. It looks like it is. I'm not a  
20 hundred percent certain, but if you're  
21 saying this is the same language that's in  
22 the execution agreement, then it is.

23 Q. And so you would agree that on  
24 this tagalong rights provision, that if the  
25 founders, George Hall and Joe De Perio,



1  
2 sold common stock, it represented less than  
3 50 percent of the aggregate number of  
4 shares outstanding, then you would not have  
5 these tagalong rights, correct?

6 A. Sorry. Say that one more time.

7 MR. SACK: Why don't we read  
8 that back, Hindy.

9 (Whereupon, a portion of the  
10 testimony was read back.)

11 A. I would agree in this  
12 agreement, in this context, that's the  
13 definition that's used here, yes.

14 Q. Well, it's not just the  
15 definition, it defines the rights of the  
16 parties, correct? And that based on what I  
17 said, that you would not have tagalong  
18 rights -- based on the circumstances I just  
19 said in the question, you would not have  
20 tagalong rights, correct?

21 A. Only at this time.

22 Q. Under this contract that you  
23 signed, correct?

24 A. But it was superseded after the  
25 contract was signed.

1

2 Q. It was superseded when?

3 A. In, I believe it was December

4 2019.

5 Q. How was it superseded?

6 A. George Hall specifically stated

7 that I would get tagalong rights, along

8 with the other shareholders, if he sold any

9 stock. And it's on the recording, which --

10 Q. And he said you would have

11 tagalong rights without any conditions,

12 without any percentage or other conditions?

13 A. He did not stipulate any

14 conditions would be relevant.

15 Q. I'm asking you now under this

16 agreement. We'll deal with that,

17 Mr. Salerno, at another time. But I'm

18 asking you under this agreement.

19 A. Yes, I agree. In this

20 definition, at this point in time, I would

21 agree with that.

22 Q. So now, as of -- you've now

23 received -- I've shown you, and you've

24 received, a series of iterations of these

25 stock purchase agreements and side letters

1

2 from Mr. De Perio that continue to list  
3 Michael Salerno as the purchaser and  
4 Michael Salerno as the party to the side  
5 agreement.

6

Is it fair to say that up  
7 through 11:09 a.m. on February 28th,  
8 neither you nor your attorney have done  
9 anything to reflect in these agreements  
10 that you, individually, were not the  
11 purchaser, but that Cypress Holdings was,  
12 is that a fair statement?

13

A. That would be fair to these  
14 agreements only, yes.

15

Q. Now, in our complaint against  
16 you and Cypress, our complaint had the  
17 following allegation, "Initial drafts and  
18 Salerno's markups of the investment  
19 agreements consistently reflected and  
20 reiterated that fact identifying the  
21 purchaser as Michael Salerno."

22

And your answer said,  
23 "Defendants deny the allegations contained  
24 in paragraph 28 of the amended complaint."

25

What was your basis for denying

1

2 the allegation that I read to you?

3 A. I would have to speak to

4 counsel regarding that.

5 Q. Did you look at the answer

6 before it went in?

7 A. I relied on my counsel.

8 Q. Let me show you the documents.

9 So this is Exhibit 3, the

10 Sport-BLX first amended complaint.

11 Paragraph 28, look at 28, and please read

12 paragraph 28.

13 A. "Defendants deny the

14 allegations contained in paragraph 28" --

15 Q. No, no. I'm sorry. Wrong

16 document. I'm sorry. I want you to look

17 at what our allegation is first.

18 MR. SPIRO: It's Exhibit 3 in

19 the pile.

20 Q. Amended complaint. Here we go.

21 Keep that open, Mr. Salerno. And then it's

22 that one. 28, Salerno received draft.

23 I'll read it aloud.

24 "Salerno received drafts of the

25 investment agreements in early February

1  
2 2019, all of which included his name in the  
3 heading, the body of the agreements and the  
4 signature line. He then extensively  
5 negotiated these agreements with Sport-BLX.  
6 Throughout over four weeks of negotiations,  
7 Salerno repeatedly represented that he  
8 would be investing in Sport-BLX  
9 individually. Initial drafts and Salerno's  
10 markups of the investment agreements  
11 consistently reflected and reiterated that  
12 fact, identifying the purchaser as Michael  
13 M. Salerno."

14 What's incorrect about that  
15 statement, that paragraph?

16 A. When -- when this statement  
17 says, "throughout over four weeks of  
18 negotiations, Salerno repeatedly  
19 represented that he would be investing in  
20 Sport-BLX individually," that is not  
21 accurate. I did not represent at any time  
22 I was going to be making an investment  
23 individually.

24 Q. But when you were getting  
25 documents that had you as the individual

1  
2 investor, and you didn't change that  
3 through multiple iterations, weren't you  
4 indicating to Joe De Perio and Sport-BLX  
5 and George Hall that you were going to be  
6 the investor?

7 MR. PEARLSON: Objection to  
8 form.

9 Go ahead. You can answer.

10 A. I agree with the next sentence,  
11 "The initial drafts and Salerno's markups  
12 of the investment agreements consistently  
13 reflected and reiterated the fact,  
14 identifying the purchaser as Michael M.  
15 Salerno." But I do not agree with the  
16 sentence prior to that.

17 Q. Okay. So let's look at the  
18 first sentence of paragraph 28. "Salerno  
19 received drafts of the investment  
20 agreements in early February 2019, all of  
21 which included his name in the heading, the  
22 body of the agreements, and the signature  
23 line." Do you agree with that fact?

24 A. I know it was in the heading.  
25 I don't know if it was in the signature

1

2 line, as well.

3 Q. I'll represent to you that it  
4 was consistently Michael M. Salerno in the  
5 signature line.

6 A. Okay.

7 Q. So you agree with -- based on  
8 my representing what the document says, you  
9 agree the first sentence is accurate?

10 A. Yes.

11 Q. Second sentence, "He then  
12 extensively negotiated these agreements  
13 with Sport-BLX."

14 A. I wouldn't use the word  
15 "extensively." There was negotiations,  
16 yes.

17 Q. And then the third sentence you  
18 disagree with, and the fourth sentence you  
19 agree with?

20 A. Correct.

21 Q. So do you know how it came to  
22 be that the answer filed in this case says,  
23 "Defendants deny the allegations contained  
24 in paragraph 28 of the amended complaint"?

25 MR. PEARLSON: Again, I would

1

2

caution the witness just on

3

reflecting conversations or repeating

4

conversations with counsel.

5

A. It would be based upon my

6

conversations with counsel. But clearly,

7

it has something to do with the fact that

8

the fourth sentence is incorrect.

9

Q. Did you review the answers

10 before they were filed?

11

A. Not thoroughly.

12

MR. SACK: Why don't we take a

13

break.

14

VIDEOGRAPHER: Off the record,

15

3:57.

16

(Whereupon, a short break was

17

taken at this time.)

18

VIDEOGRAPHER: On the record,

19

3:44.

20

Q. So Mr. Salerno, the last

21

document we looked at was Mr. De Perio

22

sending you the latest version of the

23

document at 11:09 a.m. on February 28th.

24

And at 12:27, less than an hour and a half

25

later, you wrote to Mr. De Perio saying



1  
2 that you "saw my attorney didn't update  
3 agreements with my holding company name."

4 Do you recall making that  
5 change in the documents within an hour and  
6 a half of the version that Mr. De Perio  
7 sent at 11:09?

8 A. I don't recall particularly  
9 making that change. I know the change did  
10 get done.

11 Q. Do you recall that the change  
12 was made at the last minute?

13 A. No.

14 MR. PEARLSON: Objection to  
15 form. You got to let me get my  
16 objection.

17 THE WITNESS: Sorry.

18 Q. So why don't we look at what  
19 you did and what you wrote.

20 MR. SACK: Thank you, Joe.

21 Q. And I'm directing you to the  
22 top e-mail. Why don't we -- why don't we  
23 go back into the document some so you can  
24 see the chain, Mr. Salerno.

25 Salerno Exhibit 22 is

1

2 Sport-BLX's document 18535 to 18539. And  
3 the -- on the third page, at 537, there's  
4 Mr. De Perio's e-mail of 11:09. "Mike,  
5 enclosed reflects the red lines and what  
6 should be execution versions based on  
7 acceptance of your two outstanding points  
8 below." Do you see that?

9 A. I do.

10 Q. And then you respond at 12:10,  
11 this is at 536, where you ask some  
12 clarifying questions about the  
13 capitalization chart. Do you see that?

14 A. I do.

15 Q. And then at 12:25, Mr. De Perio  
16 provides information in response to your  
17 questions about the capitalization chart.  
18 Do you see that?

19 A. Yes.

20 Q. So now if we look at the front  
21 page, 18535, we have your e-mail at 12:27,  
22 which is basically the last e-mail before  
23 these documents are executed you wrote, "I  
24 saw my attorney didn't update agreements  
25 with my holding company name. I will do

1  
2 that and send over signed documents now."  
3 Is it your position,  
4 Mr. Salerno, that it's a complete  
5 coincidence that you talked about updating  
6 the agreement with your holding company  
7 after what Mr. De Perio sent you at 11:09  
8 as the execution version? Is that a  
9 complete coincidence?

10 A. A coincidence with what?

11 Q. That it came then, after he  
12 sent you the final version of the document?

13 A. I don't know if it was a  
14 coincidence. It was now being ready to be  
15 signed and it needed to be a hundred  
16 percent accurate.

17 Q. And so it's just an accident  
18 that you corrected that aspect of the  
19 document an hour or so after he -- Mr. De  
20 Perio sent you the final negotiated version  
21 of the document?

22 MR. PEARLSON: Objection.

23 A. I don't see the context as  
24 being coincidental or correcting errors.  
25 Within an hour, like you said, we had final

1

2 documentation and I saw that it wasn't a  
3 right name of the purchasing entity, so it  
4 was corrected.

5 Q. Mr. Salerno, you just said a  
6 few moments ago you never look at the  
7 opening paragraph of these agreements  
8 because they're not important to you. So  
9 now you looked at the opening paragraph of  
10 the agreement and saw the wrong party?

11 A. Yeah. Because I was signing  
12 it.

13 Q. But you said never before. You  
14 said I never look at the opening paragraph  
15 of an agreement?

16 A. I don't recall me saying  
17 exactly never. If I said never, what I  
18 intended to say was that it's not  
19 important. So never before I have to  
20 actually sign it, would I look at that  
21 paragraph.

22 Q. You're saying it wasn't  
23 important to you, Mr. Salerno?

24 A. That's correct.

25 Q. And are you also saying it

1

2 wasn't important to Sport-BLX to know who  
3 was actually investing in the company?

4 MR. PEARLSON: Objection.

5 A. In my opinion, it wasn't,  
6 because they didn't ask me for any  
7 information after this. They could have  
8 said, hold on, wait a second, who's  
9 Cypress. They never did because they  
10 already knew because I had told them prior.

11 Q. I see. It wasn't because you  
12 had led them to think you were investing  
13 individually and then just called it my  
14 holding company? You don't think that had  
15 anything to do with their understanding of  
16 who was investing in the company?

17 A. No.

18 Q. You blaming this on your  
19 attorney for not updating the document,  
20 Mr. Salerno?

21 A. I'm not blaming anyone. I'm  
22 just stating that the document needs to be  
23 updated.

24 Q. Well, you wrote "My attorney  
25 didn't update the agreements." Would it be

1

2 fair to say you didn't update the  
3 agreements either?

4 A. It would be fair to say that,  
5 yes, the agreements needed to be updated,  
6 that both my attorney and I both -- I'm  
7 sorry. What happened?

8 MR. PEARLSON: Nothing. You  
9 can keep going.

10 A. Can you repeat the question.

11 MR. SACK: Yes. Can we have  
12 that back, Hindy.

13 (Whereupon, a portion of the  
14 testimony was read back.)

15 THE WITNESS: Thank you.

16 A. The agreement needed to be  
17 updated. At this point, neither my  
18 attorney nor I updated it.

19 Q. You could have updated this --  
20 the draft beginning as early as February 1,  
21 correct?

22 A. Yes, that's possible.

23 Q. And the document went through  
24 -- documents went through multiple  
25 iterations and negotiations between

1

2 February 1 and February 28, correct?

3 A. Correct.

4 Q. And you chose to insert Cypress  
5 as the owner at the very last minute of  
6 this negotiation, isn't that correct?

7 MR. PEARLSON: Objection.

8 A. I would disagree with that.

9 Q. You didn't choose to insert  
10 Cypress within an hour and a half of  
11 getting the final version of the document,  
12 isn't that a simple fact? That's when you  
13 chose to correct Cypress --

14 MR. PEARLSON: Objection.

15 Q. -- as the investor?

16 MR. PEARLSON: Objection.

17 You can answer.

18 A. No. There were multiple  
19 execution versions. I think, when you look  
20 back at everything you gave me going back  
21 to February 1, it also says it's an  
22 execution version. So --

23 Q. Let's hear my question -- let  
24 me rephrase my question.

25 My question was, you could have

1  
2 changed Michael Salerno to Cypress on any  
3 day between February 1 and February 28  
4 through multiple negotiations of this  
5 document, and you chose to do it an hour  
6 and a half after you got the last version  
7 of the document, is that correct?

8 MR. PEARLSON: Objection.

9 Go ahead.

10 A. I updated it prior to me  
11 signing it. In the same context, that  
12 never did they say to me, hey, Michael,  
13 shouldn't this be Cypress? Because they  
14 knew about Cypress prior.

15 Q. In what sense was Cypress "my  
16 company"? When you say "my holding  
17 company," in what sense was it "mine"?

18 A. I'm the managing partner. I  
19 was the first dollars in. This -- from  
20 going back to history, Cypress was my  
21 company. I let some of my buddies in, so  
22 it started out at a barbecue, that they  
23 wanted to be in an investment that I was  
24 in, and I said the only way I'll do it is  
25 if I control the decisions on it, and you



1

2 guys can, you know, share in the goods and  
3 the bads of it. So it was my Cypress. And  
4 the same way that the Clinton opportunity  
5 fund is George Hall's fund.

6 Q. When you -- on February 28th,  
7 were you the majority owner of Cypress?

8 A. On February 28th?

9 Q. Of 2019.

10 A. Probably not.

11 Q. So you said it was yours, even  
12 though you didn't own a majority of  
13 Cypress?

14 A. From an ownership standpoint,  
15 what you're saying is correct. I  
16 controlled Cypress and I still do.

17 Q. But "my holding company"  
18 doesn't talk about who manages or controls  
19 the company, does it? It talks about  
20 ownership. "My holding company"?

21 A. It doesn't say anything about  
22 ownership.

23 Q. What does "my" refer to there?

24 A. My holding company. It's where  
25 I hold assets.

1

2 Q. But it's where other people  
3 hold assets, as well, correct?

4 A. Yes. In the same context that  
5 Clinton Group has the opportunity fund,  
6 which it is George Hall's.

7 Q. We're not talking about the  
8 Clinton opportunity fund. We're talking  
9 about Cypress. Do you own stock in IBM,  
10 Mr. Salerno, or a public company?

11 A. IBM, no.

12 Q. Do you own stock in a public  
13 company?

14 A. Yes.

15 Q. Do you call it your holding  
16 company because you have assets in that  
17 company?

18 A. I don't control that, no. I  
19 think the controlling aspect of this is  
20 germane to why I consider that my holding  
21 company. I also think that from day one,  
22 this was my company and I let my friends  
23 join in it with me.

24 Q. Then the accurate way to  
25 describe this company is that it's an

1  
2 investment partnership that I manage and  
3 control. Isn't that a far more accurate  
4 way of describing it to someone like  
5 Sport-BLX than "my holding company"?

6 A. In your opinion, that may be  
7 true. In my opinion, I think I described  
8 it accurately. Sport-BLX, George Hall, Joe  
9 De Perio, they all knew Cypress was my  
10 holding company.

11 Q. What did you tell them about  
12 Cypress, specifically?

13 MR. PEARLSON: Can we have a  
14 timeframe, John?

15 Q. I'm referring to -- the  
16 timeframe is before February 28, 2019, what  
17 did you tell Joe De Perio and George Hall  
18 about what Cypress was?

19 A. That I have an investment  
20 company, a holding company. Mike Staisil  
21 knew it, as well, actually, because he  
22 brought mutual investment opportunities to  
23 me for Cypress. That's what I told them.

24 Q. And you told them you had  
25 multiple limited partners in Cypress?

1

2 A. I don't recall I told them  
3 there was partners or not.

4 Q. Wasn't that relevant, whether  
5 Sport-BLX was taking a million dollar  
6 investment from you or whether it was  
7 taking it from multiple individuals besides  
8 yourself?

9 A. I don't think so.

10 Q. Why not?

11 A. Because I don't think it's  
12 relevant.

13 Q. But what position -- why isn't  
14 it relevant to a high risk startup company  
15 to know who its investors are?

16 A. Because they didn't ask the  
17 question.

18 Q. No, no. I'm asking you why  
19 isn't it relevant. Not whether they asked  
20 the question or not. Why wasn't it  
21 relevant?

22 A. Relevant to Sport-BLX?

23 Q. Correct.

24 A. Because they didn't ask the  
25 question. If it was relevant, they would

1

2 have asked.

3

Q. That's the only reason you  
4 could give, while you're sitting here, that  
5 if they didn't ask the question, it must  
6 not have been relevant to them?

7

A. That's what comes to mind right  
8 now. If you give me more time to think  
9 about it --

10

Q. But you didn't tell them you  
11 had other investors other than yourself,  
12 correct?

13

A. The topic didn't come up.

14

Q. Well, so then how would they  
15 know to ask about other investors if you  
16 represented it as your company and your  
17 holding company?

18

A. In the same context, again, as  
19 when George Hall says, "I have the  
20 opportunity fund," if I want to know who's  
21 in it, I would ask him for it. With  
22 Cypress, it's a matter of if he wanted to  
23 know if there were investors, I would have  
24 been happy to tell him there were  
25 investors.

1

2 Q. So you withheld from Mr. Hall  
3 and Mr. De Perio the fact that you had  
4 investors other than yourself, correct?

5 MR. PEARLSON: Objection.

6 A. No.

7 Q. Did you tell them you had  
8 investors other than yourself --

9 A. They did not ask.

10 Q. -- in your company?

11 Did you tell them whether you  
12 had investors, other than yourself, in  
13 Cypress?

14 A. At February, I do not recall if  
15 I told them yes or no with regard to having  
16 additional investors in Cypress.

17 Q. You may have or you may not  
18 have, is that what you're saying, or you're  
19 saying you don't believe you told them that  
20 you had investors, other than yourself, in  
21 Cypress?

22 A. I believe that if they asked me  
23 the question if I had other investors, I  
24 would have answered it, yes, I do.

25 Q. Okay. Did you tell them that

1

2 you had other investors, other than  
3 yourself, in Cypress?

4 A. On February --

5 Q. On February 28th or earlier?

6 A. I don't recall exactly. If  
7 they would have asked me, I would've  
8 definitely told them.

9 Q. When you say "I don't recall  
10 exactly," are you saying you may have told  
11 them you had other investors or may not  
12 have told them, and you just don't  
13 remember?

14 A. Yes. I may have told them.  
15 Michael Staisil may have told them.  
16 Michael Staisil definitely knew I had other  
17 investors in it. He had met them. And I  
18 don't recall if they asked me specifically  
19 or not.

20 Q. You don't know what Michael  
21 Staisil told to George Hall and Joe De  
22 Perio, is that correct?

23 A. I don't know if he told them  
24 that or not.

25 Q. You don't know whether he told

1

2       them at all, correct?

3               A.       I don't.

4               Q.       So if you didn't tell George  
5       Hall and Joe De Perio -- withdrawn.

6                       Did you tell George Hall and  
7       Joe De Perio that Cypress was your holding  
8       company?

9               A.       Yes.

10              Q.       If you didn't tell them that  
11       this company had investors other than  
12       yourself, how were George Hall and Joe De  
13       Perio supposed to know to ask?

14              A.       In my opinion, if it's an  
15       important question, there would be a  
16       questionnaire with regard to the ownership  
17       of the investors.   There was no investor  
18       questionnaire here, which is quite common  
19       with investments like this.   So I don't  
20       believe that it was important to them.

21              Q.       So you're saying if there was  
22       no questionnaire, you thought it was  
23       acceptable to withhold from them that there  
24       were investors other than yourself?

25                      MR. PEARLSON:   Objection to



1

2 form.

3 A. I did not withhold anything

4 because I was not asked anything.

5 Q. Withhold means not saying,

6 Mr. Salerno. Did you not say to them "I

7 have investors other than myself in my

8 holding company"?

9 MR. PEARLSON: I'm just going

10 to object to the beginning of the

11 question. You're getting very

12 argumentative. Withhold means what

13 it means.

14 Go ahead, you can answer.

15 A. I did not withhold anything

16 from them.

17 Q. Did you tell them that you had

18 investors, other than yourself, in Cypress?

19 MR. PEARLSON: Again, asked and

20 answered.

21 A. I don't -- I don't recall. I

22 know Michael Staisil knew. I believe that

23 he would have told them. And I also know

24 if they asked me directly, I would have

25 answered affirmatively, yes, there are

1  
2 investors. If they gave me a  
3 questionnaire, I would have filled it out,  
4 yes, I have other investors.

5 Q. So Mr. Salerno, when they asked  
6 you in August for the limited partners, why  
7 did you refuse -- if you were willing to  
8 say it in February, why did you refuse to  
9 say it in August?

10 MR. PEARLSON: Objection to  
11 form.

12 Q. Why?

13 A. You're not --

14 MR. PEARLSON: Wait. Wait.  
15 Wait. Wait. Hold on a second.  
16 First of all, no need to yell.  
17 Second of all, I object.

18 You can answer the question if  
19 you understand it.

20 Q. You said you were willing to  
21 say it in February, had you been asked who  
22 the investors in Cypress were. You were  
23 asked in August who were the investors in  
24 Cypress, and you refused.

25 A. That is not what I said.

1

2 Q. You refused to provide it to  
3 Sport-BLX --

4 A. No. What I said is that I  
5 would tell them there were investors. I  
6 would not have told them who they are.

7 Q. You would have withheld from  
8 Sport-BLX who its beneficial owners were?

9 A. I didn't --

10 MR. PEARLSON: Hold on. Let me  
11 get in my objection.

12 Objection to form.

13 Go ahead, you can answer.

14 A. I would not have withheld  
15 information and I did not withhold  
16 information.

17 Q. Did you just say that had you  
18 been asked in February who the investors in  
19 Cypress were, you would not have said who  
20 they were?

21 A. That's not what was said. You  
22 asked me -- and read it back, please,  
23 because I believe what you said was would  
24 you have told them there were investors. I  
25 would have told them there were investors.

1

2 I would not have given the names of the  
3 investors.

4 Q. So had you been asked in  
5 February were there other investors in  
6 Cypress, you would have said yes, correct?

7 A. Yes.

8 Q. And if they then said who are  
9 the other investors, what would your answer  
10 have been?

11 A. It's none of their business.

12 Q. And don't you think it was the  
13 business of Sport-BLX to know who was  
14 signing onto a high risk business with a  
15 complete risk of loss?

16 A. No. Because they had no  
17 discretion over the investment decision to  
18 do it or not do it.

19 Q. Sport-BLX had complete  
20 discretion to decide who its investors  
21 were, correct?

22 A. Any private entity has that --

23 Q. Correct. So wouldn't a company  
24 like Sport-BLX want to know who is  
25 investing in the company, and a founders

1

2 round?

3 A. I can't speak to what Sport-BLX  
4 would have thought was important, other  
5 than that if it was important, they would  
6 have asked me. They would have had a  
7 questionnaire for shareholders.

8 Q. Don't you know it was important  
9 because George Hall and Joe De Perio met  
10 with you many times to get to know you and  
11 make sure you understood the investment and  
12 make sure you got to ask all the questions  
13 you had? Didn't they make it clear to you  
14 they wanted to know who their investors  
15 were?

16 MR. PEARLSON: Objection to  
17 form.

18 Go ahead.

19 A. They did not know. They did  
20 not ask me who the investors of Cypress  
21 were.

22 Q. No, no. Sport-BLX wanted to  
23 know who the investors were in Sport-BLX,  
24 isn't that right, didn't they convey that  
25 to you based on all of the time they spent

1  
2 with you, personally?

3 A. No.

4 Q. Why did you think they spent so  
5 much time with you, personally?

6 A. They wanted to understand what  
7 I could bring to the table as a director  
8 and of benefit to Sport-BLX.

9 Q. And what could you bring to the  
10 table of benefit to Sport-BLX?

11 A. Experience in business, a  
12 successful business for over 25 years,  
13 money, relationships.

14 Q. One of your limited partners in  
15 Cypress is a felon, Dennis Nathan, correct?

16 A. That's what's recently been  
17 said, yes.

18 Q. Did you know that in February  
19 2019?

20 A. No.

21 Q. Don't you think it would have  
22 been relevant to Sport-BLX to know if one  
23 of its investors was a felon?

24 A. I didn't know he was a felon.

25 Q. And that's something Sport-BLX

1  
2 couldn't know because you didn't tell them  
3 about your limited partners, correct?

4 MR. PEARLSON: Objection.

5 A. What couldn't they have known?

6 Q. They could have done due  
7 diligence and research on the limited  
8 partners?

9 MR. PEARLSON: Objection to  
10 form.

11 Go ahead.

12 A. If they could have asked me a  
13 question of who the investors were, then I  
14 would have -- they would have had the  
15 opportunity to know that I would not have  
16 given them the names there, and they could  
17 have said no, we're not going to take your  
18 investment. But they didn't do that  
19 because it was not important to them.

20 Q. It may also be, Mr. Salerno,  
21 they didn't do that because you led them to  
22 believe it was your money that was  
23 investing in Cypress -- it was your money  
24 in Cypress only, correct, Mr. Salerno?

25 A. I can't speculate on that.

1

2 Q. Well, you're doing a lot of  
3 speculating about what was important or not  
4 important.

5 MR. PEARLSON: John -- John,  
6 can you ask a question? Is that a  
7 question?

8 Q. Mr. Salerno, in January of 2019  
9 you filed a lawsuit along with other  
10 limited partners in Cypress, is that right?

11 A. No.

12 Q. Against the Ebury fund, didn't  
13 you and other limited partners in Cypress  
14 file a lawsuit against the Ebury fund?

15 A. I'm sorry. I thought you asked  
16 me if Cypress filed a lawsuit. Sorry.  
17 There was a lawsuit against Ebury funds.  
18 Ebury funds, me and some of my friends  
19 invested into a -- what would you call it?  
20 A tax lien fund. The tax lien fund started  
21 having problems paying distributions.  
22 We've looked into it. There was  
23 malfeasance, so we filed a lawsuit and it  
24 was quickly settled and they paid us what  
25 we were supposed to receive.



1

2 Q. Were eight of the limited  
3 partners in Cypress plaintiffs in that  
4 litigation against the Ebury fund?

5 MR. PEARLSON: Are you  
6 including him?

7 MR. SACK: I'm including Ice  
8 Holdings.

9 A. I don't recall exactly who they  
10 were, if all of them were. But --

11 Q. But many of them?

12 A. There's some overlap,  
13 definitely.

14 Q. Yeah. And isn't that something  
15 Sport-BLX would want to know, if it's  
16 admitting investors into a fund who were  
17 involved in a litigation over a private  
18 investment?

19 A. I don't see why.

20 Q. You don't think they would want  
21 to know whether they have litigious  
22 investors in their high risk company? You  
23 cannot think of a reason why a small  
24 private company would want to know of  
25 litigations involving its new investors?

1

2

MR. PEARLSON: Hold on a

3

second. What question do you want

4

him to answer there? There was

5

multiple parts.

6

MR. SACK: Well, let me

7

rephrase it.

8

Q. Wouldn't a small private

9

company wish to know whether its new

10

investors were engaged in litigation over

11

another private investment at the very time

12

they're making that investment in

13

Sport-BLX?

14

A. I won't speculate on what they

15

would want to know because they didn't ask

16

me questions such of that, so I don't

17

believe that it was important to them. If

18

it was, they would have asked me questions

19

of it.

20

Q. Mr. Salerno, you know in

21

securities law there's the concept of a

22

reasonable investor and what would a

23

reasonable investor want to know before

24

entering into a securities transaction.

25

Are you familiar with that?

1

2           A.       I understand -- if that's what  
3   you're telling me.   I'm not familiar with  
4   that law.   I'm not a lawyer.

5           Q.       But you've taken multiple  
6   series security licenses, haven't you?  
7   You've been a series 7, series 63 and many  
8   others.   You've studied a lot about the  
9   basic elements of securities markets and  
10   securities law?

11          A.       I have a good understanding to  
12   pass the test.

13          Q.       Yeah.   Don't you think a  
14   reasonable investor or a reasonable private  
15   company would want to know whether its new  
16   investors in the founders round were  
17   engaged at the same time in litigation over  
18   another private investment?

19          A.       In my opinion, a reasonable  
20   investor and a reasonable company that is  
21   starting up, if it was important to them,  
22   they would put a questionnaire together so  
23   that they could address any items that they  
24   find important.   So that would be a  
25   reasonable action.

1

2 Q. And so your view is if a small  
3 start up company didn't have a  
4 questionnaire, that conveyed to you they  
5 didn't care who their investors were? Is  
6 that your position?

7 MR. PEARLSON: Objection.

8 Go ahead, you can answer.

9 A. My position is, this can't be  
10 described as a small investment company  
11 when you have the founders touting that  
12 they've got 20, 30 years experience with  
13 billions of dollars in the market, who are  
14 very sophisticated, who have multiple  
15 holding companies, who buy and sell  
16 entities all the time, and are very well  
17 versed of identifying what should be  
18 important and should not be important to  
19 them.

20 MR. SACK: Can I have that  
21 answer read back, please, Hindy.

22 (Whereupon, a portion of the  
23 testimony was read back.)

24 Q. Sport-BLX was a small company  
25 that was looking for strategic investors,

1

2 correct, Mr. Salerno?

3 A. Yes.

4 Q. That's what they conveyed to  
5 you, they were looking for strategic  
6 investors, correct?

7 A. Yes.

8 Q. And by "strategic," that meant  
9 people who understood the business and  
10 people who were going to contribute to this  
11 high risk business, correct?

12 A. I won't speculate on what they  
13 define strategic as.

14 Q. But if they conveyed to you  
15 they wanted strategic investors, didn't you  
16 realize they wanted to know who these  
17 investors were, who the people were who  
18 were putting up money into their company?

19 A. I was the investor. I made the  
20 sole decision. No one else.

21 Q. You made the decisions, but the  
22 others were the investors. It was their  
23 money. Wouldn't you call them the  
24 investors because it was their money? Most  
25 of the million dollars that went into this

1  
2 company came from other investors, correct?

3 A. I made the decision to invest  
4 in Sport-BLX. The other seven or eight  
5 people didn't even know Sport-BLX at all  
6 until this lawsuit and they were recently  
7 contacted. So, no.

8 Q. Would it be accurate to call  
9 Cypress a pooled investment vehicle,  
10 Mr. Salerno?

11 MR. PEARLSON: I'm going to  
12 object to the extent it calls for a  
13 legal conclusion.

14 You can answer.

15 A. Under what definition? If it's  
16 what you showed me earlier, no.

17 Q. Why isn't it a pooled  
18 investment vehicle?

19 A. Because it's not a fund.

20 Q. Well, we'll disagree. It's not  
21 limited to fund. That was an example.

22 But it is a pooled investment  
23 vehicle if we define it as pooling money  
24 from multiple investors in one investment  
25 vehicle, correct? If it's defined as

1

2 pooling money from multiple investors in  
3 one investment vehicle, would it be fairly  
4 called a pool investment vehicle?

5 A. I'm not certain. It could be  
6 considered a partnership.

7 Q. It was a partnership that you  
8 managed, correct?

9 A. Yes. But I was saying a  
10 partnership in context of a partnership of  
11 monies coming together.

12 Q. Yeah. You could have called,  
13 in that e-mail where you called it "my  
14 holding company," you could have called it  
15 many other things accurately, correct?

16 A. I think I did call it  
17 accurately.

18 Q. No. My question is, you could  
19 have called it other things accurately,  
20 such as this is the investment partnership  
21 that I manage, or I want to update the  
22 agreements with the investment partnership  
23 I have with my other LPs. You could have  
24 called it other things, other than "my  
25 holding company," correct?

1

2

MR. PEARLSON: Objection.

3

Calls for speculation. Lack of

4

foundation.

5

You can answer.

6

A. I don't think I needed to,

7

because they already knew of Cypress.

8

Q. And they already -- but they

9

didn't know -- they didn't already know

10

that Cypress had investors other than

11

yourself, isn't that right, Mr. Salerno?

12

A. That's speculation because I

13

don't know if Michael Staisil told them

14

that or if they would have asked me a

15

question of it, I would have told them

16

that.

17

Q. But you can't say, as you're

18

sitting here, that you told them that

19

Cypress had investors other than yourself,

20

correct?

21

A. Again, I shared, I don't recall

22

a hundred percent, because if they would

23

have asked me, I would have told them.

24

Q. You can't say, as you're

25

sitting here, that you told them that



1

2 Cypress had investors other than yourself,  
3 correct?

4

MR. PEARLSON: I think we've  
5 been over this.

6

MR. SACK: No, no. He's not  
7 answering the question.

8

Q. As you're sitting here, you  
9 cannot say that you told George Hall and  
10 Joe De Perio that Cypress had investors  
11 other than yourself, correct?

12

MR. PEARLSON: I think he did  
13 answer this specific question. He  
14 said he couldn't recall either way.

15

But go ahead, you can answer.

16

MR. SACK: Please, don't answer  
17 for the witness, Ross. You really  
18 crossed the line.

19

MR. PEARLSON: John, we've been  
20 over this like five times now.

21

If you understand the question,  
22 you can answer it.

23

A. You used like three different  
24 double negatives there. Can you ask me the  
25 question differently.

1

2

MR. SACK: Hindy, can you read  
the question back.

4

(Whereupon, a portion of the  
testimony was read back.)

6

MR. PEARLSON: Objection.

7

Asked and answered.

8

Go ahead.

9

A. Again, I don't recall.

10

Q. Mr. Salerno, after you told Joe

11

De Perio -- after you told Joe De Perio you

12

were -- let me get the exact language.

13

After you told Joe De Perio

14

that "my attorney didn't update agreements

15

with my holding company name," you said

16

that you would actually make the edits in

17

the agreement, correct? Take a look at it.

18

A. What I wrote was, "I will do

19

that and send over signed documents." So

20

yes, that would be correct.

21

Q. So you actually made the change

22

at that point in the documents?

23

A. I don't recall doing it, but

24

this is what I'm saying, so I believe it to

25

be accurate.

1

2

MR. PEARLSON: This is 23?

3

COURT REPORTER: Yeah.

4

Q. I'm just going to show you,

5

take a look at one of the stock purchase

6

agreements, Mr. Salerno. And you see that

7

you changed in the first paragraph, Cypress

8

Holdings, you inserted Cypress Holdings for

9

the abbreviated term purchaser?

10

A. Yes.

11

Q. And then in the side agreement,

12

Mr. Salerno, you see where you inserted in

13

the first paragraph Cypress Holdings III,

14

but then you kept that abbreviated term

15

Salerno in bold in the one, two, three,

16

fourth line down?

17

A. I see that I put in Cypress

18

Holdings. I didn't change anything else.

19

Q. And then you kept where

20

number 1 it says Salerno, right of first

21

offer in the caption for paragraph 1?

22

A. Are you asking me a question?

23

Q. Yeah. You kept it as Salerno,

24

right of first offer?

25

A. I didn't change anything in the

1

2 document other than that line. So anything  
3 referencing Salerno as -- what do you call  
4 it -- defining Cypress Holdings was not  
5 changed. Nothing was changed.

6 Q. Why was that? Why didn't you  
7 make that change?

8 A. I'm not an attorney. I think  
9 it's valid.

10 Q. And is it -- did you want to  
11 keep these rights for yourself,  
12 individually, and not Cypress?

13 A. No.

14 MR. PEARLSON: Objection to  
15 form.

16 THE WITNESS: I'm sorry. You  
17 finished?

18 MR. PEARLSON: Yeah. Go ahead.

19 THE WITNESS: I'm sorry.

20 A. No.

21 Q. There would be a conflict with  
22 the Cypress limited partners for you to get  
23 a benefit for yourself, personally, that  
24 didn't apply to Cypress Holdings III,  
25 correct?

1

2

MR. PEARLSON: Objection.

3

That's not what this agreement says.

4

You know better, John.

5

A. I don't understand the

6

question.

7

Q. You're not looking for

8

something for yourself, individually, even

9

though it says Cypress here. The rights

10

here, you're saying, aren't to you,

11

personally, even though it says Salerno

12

right of first offer?

13

A. Absolutely not. I was not

14

looking for anything for me, personally,

15

because this is the definition of Cypress

16

Holdings.

17

Q. Let's take a look at -- now I

18

have to find an exhibit number, the April

19

11th e-mail.

20

MR. PEARLSON: Something that's

21

been previously marked?

22

MR. SACK: It has been

23

previously marked, yeah. It's

24

Exhibit 9. Let's see if we can find

25

it here.

1

2 Q. What I would like you to do is  
3 turn to page 1028 of that document and I'd  
4 like to go back to the e-mail I asked you  
5 about earlier.

6 A. 1028, you said, right?

7 Q. 1028 in the lower right.

8 A. Okay.

9 Q. You sent an e-mail on April 11  
10 at 9:33 a.m. to Joe De Perio and George  
11 Hall. You say, "I would like to exercise  
12 my right to purchase my pro rata share of  
13 the new securities per paragraph 1 A of the  
14 side letter."

15 Why did you refer to your right  
16 to purchase the pro rata share there and  
17 not Cypress's right, Mr. Salerno?

18 A. As I believe I said prior, when  
19 I speak, you or I, it's synonymous with  
20 Cypress.

21 Q. And you know that that's clear  
22 to everyone else who gets e-mails like  
23 this, that you and Cypress are synonymous?

24 A. It absolutely should be because  
25 the agreement is between Cypress and

1

2 Sport-BLX, not me. I would have no  
3 standing.

4 Q. Mr. Salerno, as we talked about  
5 earlier today, in the next paragraph you  
6 include some bullet points, and one of them  
7 talked about -- it's a whole series of  
8 issues and the fifth bullet refers to  
9 rental agreement, market rent and address  
10 issues of self dealing. You recall we  
11 talked about that earlier?

12 A. Yes.

13 Q. And just to summarize -- I'm  
14 not trying to mischaracterize -- you said  
15 that was a reference to your concerns that  
16 Sport-BLX was paying over above market rent  
17 to Clinton Group, and that constituted self  
18 dealing, is that what you were conveying  
19 there?

20 A. Clinton Group, George Hall,  
21 again, they're -- just like I, you, and  
22 Cypress is synonymous, George Hall and  
23 Clinton Group are synonymous.

24 Q. So let me try that again. Your  
25 reference to the rental agreement there and

1

2 the reference to market rent and address  
3 issues of self dealing, that reflected your  
4 concerns that Sport-BLX was paying above  
5 market rent to individuals or entities with  
6 -- who were both acting for Sport-BLX and  
7 for related parties, is that right?

8 MR. PEARLSON: I'm going to  
9 object. This was asked and answered  
10 hours ago.

11 A. It was related to my concern of  
12 Sport-BLX paying above market rents to  
13 Clinton Group, which Clinton Group is a  
14 hundred percent owned by George Hall, which  
15 that's the self dealing that I was  
16 referring.

17 Q. Was that a serious concern that  
18 you had at the time?

19 A. Yes.

20 Q. Why would -- why did you want  
21 to exercise your right to purchase your pro  
22 rata share of stock in a company that you  
23 had that serious concern about,  
24 Mr. Salerno?

25 A. Because at that point in time,



1

2 I believed, based upon communications, that  
3 we would have gotten it resolved.

4 Q. But you didn't -- but you knew  
5 by then Sport-BLX and George Hall and  
6 Clinton Group and Joe De Perio had a  
7 different position, didn't you, about the  
8 validity of that rent and the validity of  
9 that relationship?

10 A. I believed that we would've got  
11 it resolved amicably.

12 Q. Let me ask you, did you know  
13 when you wrote that e-mail that Hall and  
14 De Perio had a different position from you  
15 on those issues?

16 A. We had a difference of opinion,  
17 and I thought that we would wind up  
18 somewhere in between, rather than them  
19 drawing a line in the sand and syphoning  
20 money from Sport-BLX.

21 Q. What was the difference of  
22 opinion that you just referred to that Hall  
23 and De Perio and Sport-BLX had from yours?

24 A. That the rents, in their  
25 opinion, were appropriate, and in my

1

2 opinion, they were inappropriate.

3 Q. And I take it they also thought  
4 it was appropriate for Sport-BLX to be  
5 paying that money to Clinton Group and you  
6 thought it was not appropriate for them to  
7 be paying it to Clinton Group?

8 A. The Clinton Group issue comes  
9 into play as who the benefit of the  
10 overpayment was.

11 Q. So there are two issues, the  
12 overpayment and to whom it went, correct?

13 A. Yes.

14 Q. And they disagreed with you on  
15 both, George, Joe, and Sport-BLX disagreed  
16 with you on both of those issues, correct?

17 A. Yes.

18 Q. Did they indicate they would  
19 change their position as of April 11 when  
20 you wrote that e-mail?

21 A. The timeline, I'm not a hundred  
22 percent certain on, but there are numerous  
23 communications where George Hall and I  
24 would speak and then he spoke to, I'm glad  
25 we had this conversation, even Mr. De

1

2 Perio, with regard to how we would move  
3 forward, we would find a path to work  
4 together and resolve this. So that's what  
5 I was relying on.

6 Q. You had no idea that it would  
7 be resolved at this point, correct?

8 A. There was no conclusion at this  
9 point.

10 Q. And one of the things that  
11 George and Joe were saying to you on or  
12 about April 11th was that this had all been  
13 disclosed to you, the amount of the rent,  
14 and the Clinton Group relationship when you  
15 invested, correct?

16 A. I don't see that here.

17 Q. No. I didn't ask you about  
18 this e-mail. I said in this time period,  
19 was one of the things George and Joe were  
20 saying to you was you knew the rent when  
21 you invested, you knew the Clinton Group  
22 was housing Sport-BLX, and that was not  
23 something they were prepared to change,  
24 isn't that what they told you on or about  
25 April 11th?

1

2 A. No.

3 Q. They never conveyed that to  
4 you?

5 A. As what you said, no.

6 MR. SACK: Off the record for a  
7 minute.

8 (Whereupon, an off-the-record  
9 discussion was held.)

10 VIDEOGRAPHER: Off the record,  
11 4:30.

12 (Whereupon, a short break was  
13 taken at this time.)

14 VIDEOGRAPHER: On the record,  
15 4:34.

16 Q. Mr. Salerno, this top e-mail,  
17 this February 28, 11:09 a.m. It's one  
18 where Mr. De Perio sends you documents  
19 which reflect the red lines and what should  
20 be execution versions of the agreements. I  
21 had asked you a number of questions about  
22 subsequent changes and e-mails. I would  
23 like you to look at earlier e-mails here,  
24 please.

25 There's an e-mail on the second

1  
2 page, Sport-BLX 16290, from Joe De Perio to  
3 you copying George Hall. It says, "Mike we  
4 worked through your comments. Here is  
5 where we are. Please let me know if there  
6 is anything left open pending your review.  
7 Regards, Joe."

8 And then under purchase  
9 agreement, on the fourth line down, there's  
10 a sentence that begins -- actually, let me  
11 read that whole section beginning it with,  
12 "We are unable to produce 12/31 financials  
13 and thus can't rest either the financials  
14 and undisclosed liabilities. And frankly,  
15 they won't be instructive, given our  
16 operations and their inception date. We  
17 hope you get comfortable with the materials  
18 in the data room. There is no opex since  
19 Clinton is bearing the cost prior to the  
20 closing of the preseries A ground and the  
21 liabilities are tied to the consensus  
22 agreement in the data room and our legal  
23 counsel."

24 And there's a response from you  
25 a short time later. And I'm just going to

1  
2 read paragraph 2 in your e-mail at  
3 10:25 a.m. "At -- that there is no  
4 material outstanding debt, other than that  
5 which is incurred in the ordinary course of  
6 business and to Consensus." Do you see  
7 that?

8 A. Yes.

9 Q. And the Consensus debt was for  
10 the build out of the technology platform,  
11 correct?

12 A. I believe so, yes.

13 Q. And so you were familiar with  
14 this debt that was owed to Consensus,  
15 correct, before you signed the agreement?

16 A. The amount, I don't recall. I  
17 know that there were -- there was a  
18 contract that they had with Consensus, that  
19 Sport-BLX had with Consensus. Consensus  
20 was paid cash and stock. The unpaid cash  
21 for any outstanding invoices should be  
22 reflected as debt in its normal and  
23 ordinary course.

24 Q. And you looked at that issue  
25 before you signed the stock purchase

1  
2 agreement. You looked to see what the  
3 relationship was with Consensus, and what  
4 the obligation was that the company had to  
5 Consensus, correct?

6 A. I don't want to agree the way  
7 you said it. I looked at the data room,  
8 got a Consensus agreement. I don't recall  
9 if it was an executed agreement or not, and  
10 I understood that census -- Consensus  
11 received stock and they would be owed  
12 money, cash for services rendered based  
13 upon different, and I think it was based  
14 upon different stages of completion.

15 Q. And you understood that that  
16 was a significant obligation of Sport-BLX.  
17 Before you signed this agreement, you knew  
18 Sport-BLX had a significant obligation to  
19 Consensus for the build out of the  
20 technology platform, correct?

21 A. Yes.

22 MR. PEARLSON: Objection.

23 THE WITNESS: Sorry. Sorry.

24 Q. Mr. Salerno, after you signed  
25 this agreement on February 28th, did you

1

2 wire the funds promptly thereafter?

3 A. No. I needed to get the wire  
4 instructions, which I did not receive for  
5 two weeks.

6 Q. You didn't have the wire  
7 instructions as of February 28th?

8 A. No. I don't believe so.

9 Q. You're sure?

10 A. I don't believe so. And there  
11 was a big thing about this, because I had  
12 an argument with Mr. Joe De Perio about it  
13 and the conclusion was that they found,  
14 which I saw somewhere in discovery, that  
15 they realized they did not send it to me,  
16 they actually only -- they asked Henry to  
17 send it to me. And Henry only sent it to  
18 Mr. Joe De Perio, not to me.

19 Q. So how did you get to wire the  
20 money if Henry didn't send you the wire  
21 instructions?

22 A. After the argument that I had,  
23 he then sent me the wiring instructions and  
24 I promptly sent them. And there's also a  
25 recording to that, as well.



1

2 Q. That's another conversation you  
3 secretly recorded?

4 A. That I recorded of Joe De Perio  
5 and I talking about the wiring  
6 instructions.

7 Q. When did you do that?

8 A. Before the wire was sent.

9 Q. So you started recording Joe De  
10 Perio within a week of your investing in  
11 the company, you started recording?

12 A. I think there is one, yes.

13 Q. No, no. Not I think there is  
14 one. Did you secretly -- did you start to  
15 secretly record conversations within  
16 approximately a week of making your  
17 investment in this company?

18 A. Yes, it's very possible.

19 Q. Why?

20 A. Because at that point, I was  
21 already concerned about the investment  
22 being made. And if I didn't do it, that  
23 they were going to hold me up with a  
24 contract dispute.

25 Q. Within one week you were

1

2 secretly recording your new business  
3 partners, that's what you're saying?

4 MR. PEARLSON: Objection to  
5 form.

6 Q. You already distrusted them?

7 A. I had a concern.

8 Q. What was your concern?

9 A. That they were -- if I didn't  
10 make the investment, they would come after  
11 me for breach of contract.

12 Q. Didn't Mr. De Perio e-mail you  
13 one week after your investment and say we  
14 don't want your money, Mr. Salerno. We  
15 don't want your money. Didn't he e-mail  
16 that to you?

17 A. Paraphrasing it. But after my  
18 conversation with Mr. Hall, I understood it  
19 as they were using that as a tactic to come  
20 after me.

21 Q. What? What tactic? They said  
22 they don't want your money. These are the  
23 people you're accusing of fraudulently  
24 inducing you, who said don't invest,  
25 Mr. Salerno. That's what they said, don't

1

2 invest?

3 A. If they didn't want the money,  
4 they could have sent it back.

5 Q. You didn't send it. Mr. De  
6 Perio e-mailed you before March 12 and said  
7 don't send your money, deal's off. That's  
8 what he wrote to you.

9 A. I don't remember the timeline.

10 Q. Okay. Let's do it.

11 MR. SACK: March 8th.

12 What exhibit is this, Hindy?

13 COURT REPORTER: 24.

14 Q. Please take a look at the  
15 e-mail from Joe De Perio to you on March  
16 8th at 5:19 p.m. "Mike, I tried your line  
17 this morning and also sent a text. I also  
18 just spoke to our CFO and learned the funds  
19 haven't come in. At this point, too much  
20 time -- too much has changed since our  
21 closing dinner and exchange of executed  
22 documents last Thursday. I would not be a  
23 proper fiduciary to our founders/investors  
24 and preseries A investors who have funded  
25 simultaneously with the execution of docks

1  
2 as stated if we accepted the investment on  
3 Monday or thereafter. Obviously I don't  
4 know your intent. I hope we can find a way  
5 to cooperate at another endeavor in the  
6 future. Best regards, Joe."

7 So now do you see that Joe De  
8 Perio, on behalf of Sport-BLX, said don't  
9 send us your money, we don't want it?

10 A. I see the e-mail. There was  
11 already a signed agreement, and I was  
12 concerned that they would come after me for  
13 breach of that agreement.

14 Q. Nothing here talks about -- did  
15 you ask them, can we just part ways  
16 amicably?

17 A. I spoke to Mr. Hall after I  
18 received this e-mail. I was in Florida, I  
19 remember. And I spoke to Mr. Hall about  
20 it, and we said that we would talk over the  
21 following week. He made comments that made  
22 me scared he was going to take legal action  
23 if I didn't, and that is why I moved  
24 forward and promptly sent the money.

25 Q. What did he say to you that

1

2 made you scared, using your words?

3 A. That we already signed an  
4 agreement and that the agreement was  
5 enforced.

6 Q. And did he say -- did he say  
7 what the harm was to Sport-BLX at that  
8 point if you didn't send the money and you  
9 parted ways? Did he indicate what he could  
10 sue you for?

11 A. I don't recall.

12 Q. What did you think you could be  
13 sued for?

14 A. With Mr. Hall, it doesn't take  
15 much. Look where I am.

16 Q. Who initiated this suit,  
17 Mr. Salerno? You did.

18 A. With regard to the securities  
19 claim that I realize you guys now filed, as  
20 well.

21 Q. Did you speak with your  
22 attorney because of this so called fear of  
23 a litigation, Mr. Salerno?

24 MR. PEARLSON: I just want you,  
25 again, to be careful about revealing

1

2 the contents of any discussions with  
3 your counsel.

4 A. I don't recall. I did speak to  
5 counsel. But I don't recall when it was.

6 Q. What about Mr. De Perio's  
7 e-mail made you concerned about a  
8 litigation? And I draw your attention to  
9 the line, "I hope we can find a way to  
10 cooperate on another endeavor in the  
11 future."

12 What about this e-mail made you  
13 concerned about a litigation?

14 A. It was Mr. Hall's conversation  
15 with me.

16 Q. Did he say -- did he say to  
17 you, if you don't want to invest, Michael,  
18 let's part ways, or in substance?

19 MR. PEARLSON: Who are you  
20 saying the "he" is now, John?

21 MR. SACK: Withdrawn.

22 Q. What's your best recollection  
23 of what George Hall said to you?

24 A. That they were expecting the  
25 money earlier. I expressed to him that, as

1

2 I said to Joe that night when we had  
3 dinner, send me the wire instructions. Joe  
4 said he would. The wire instructions never  
5 came over. And at that point he said,  
6 well, we have a signed contract with you,  
7 and, you know, we don't know what your  
8 intent is.

9 And there was other context,  
10 and I'm paraphrasing, and I don't recall  
11 exactly. But he used some terminology that  
12 when we got off the phone, I felt that he  
13 was setting me up for a lawsuit.

14 Q. What terminology did he use  
15 that you say is now a set up for a lawsuit?

16 A. I don't recall a hundred  
17 percent. I don't recall.

18 Q. Did you just ask him -- let me  
19 just ask you, did you want to invest in the  
20 company at that time, on March 8th?

21 A. Yes.

22 Q. And did you say may I -- I want  
23 to invest? Did you tell George Hall you  
24 did want to invest?

25 A. I told him I would meet my

1  
2 obligations, as the signed agreement -- and  
3 again, I'm going by memory. And he said  
4 something like that's what we all expect,  
5 is to do what was obligated, or something  
6 to that effect.

7 Q. But he didn't say he would file  
8 a lawsuit or was considering filing a  
9 lawsuit against you, correct?

10 A. Not directly, no.

11 Q. How did he do it indirectly?

12 A. It was the innuendo about the  
13 contract and the obligations, and I thought  
14 that the best position for me was to send  
15 him the money so I wouldn't have any -- he  
16 wouldn't have any claim breach and we would  
17 work it out from there.

18 Q. So speaking to you about your  
19 contracts and your obligations, to you,  
20 that's a threat of litigation?

21 A. I'm sorry?

22 Q. You said he spoke to you about  
23 your contract and your obligations. You  
24 took that as a threat of litigation?

25 A. In the way he spoke to it, yes.



1

2 Q. But you can't tell us the words  
3 that Mr. Hall used that you took that way,  
4 is that right?

5 MR. PEARLSON: Objection.

6 Asked and answered.

7 A. That's right.

8 Q. Did you record the call with  
9 George Hall?

10 A. No.

11 Q. Why not?

12 A. I was in Florida.

13 Q. You had already recorded your  
14 call with Mr. De Perio, is that right?

15 A. I think I did.

16 Q. Yeah, was that the first call  
17 you recorded in early March?

18 A. I'm not sure.

19 Q. Did you record any calls before  
20 February 28th, when you signed the stock  
21 purchase agreements?

22 A. I don't think so. But I don't  
23 want to say something that I'm not a  
24 hundred percent sure of.

25 Q. Have you produced in this

1

2 litigation every recording that you made?

3 A. Yes.

4 Q. Was the reason you didn't fund  
5 the investment promptly was because you  
6 were waiting for some information about the  
7 investment that you thought was promising?

8 A. No.

9 Q. And there was no other  
10 information that you were either waiting  
11 for or counting on before funding, is that  
12 right?

13 A. No.

14 Q. I would like to look at one  
15 more exhibit. You're saying that you  
16 invested only after you were sent the wire  
17 instructions again?

18 MR. SACK: The February 1st  
19 e-mail, please.

20 MR. STERN: Number 16.

21 Q. I'm showing you an e-mail on  
22 February 1 from Joe De Perio to you where  
23 he encloses the first version of these  
24 agreements, and he attaches a link to the  
25 data room and he gives you the wiring

1  
2 instructions. Do you see that,  
3 Mr. Salerno?

4 A. Yes, I do, actually.

5 Q. So he gave you the wiring  
6 instructions on February 1st. You had them  
7 all along?

8 A. I did not realize that, which  
9 is why when we had dinner, I made it  
10 specifically clear to him, Joe, give me the  
11 wire instructions, send them to me, and  
12 I'll get you the wire. He did not do that,  
13 and I did not realize these were here.

14 Q. Did you check?

15 A. Yes, I looked to see if he sent  
16 me something recently, and I did not see  
17 this, which is -- I think is also relevant  
18 to their own e-mail where Joe De Perio  
19 says, "George, I think I found the problem.  
20 Henry didn't send the wire instructions to  
21 Michael, he only sent them to me."

22 Q. Mr. Salerno, you started  
23 recording conversations with Mr. De Perio  
24 and Mr. Hall within approximately one week  
25 of your February 28th investment, correct?

1

2 A. I think so.

3 Q. You early -- just a short time  
4 ago told us that roughly one month later,  
5 on April 11th, you said you wanted to buy  
6 more stock in Sport-BLX and you believed  
7 you could work out your disputes with  
8 Mr. Hall and Sport-BLX over rent and  
9 Clinton Group, correct?

10 A. Yes.

11 Q. If you had that level of  
12 distrust of Hall and De Perio, how on earth  
13 could you think you would be working out  
14 these disputes with them?

15 A. I took them on their word that  
16 we could work it out.

17 Q. You didn't take them on their  
18 word because you started recording  
19 conversations in March.

20 A. Just because I was recording  
21 the conversations doesn't mean that I take  
22 them on their word to take future actions  
23 to come up with a solution.

24 Q. But don't you record in order  
25 to prove something to somebody who you

1  
2 think doesn't do what they say? Isn't that  
3 the purpose of recording, to have evidence  
4 you can hold up to them and say you told me  
5 X and now you're doing Y? Isn't that the  
6 basic reason to secretly record  
7 conversations?

8 A. The reason to record the  
9 conversation was to protect my interest.

10 Q. And you thought your interests  
11 were so vulnerable they needed secret  
12 recordings after a week of investing in  
13 this company?

14 MR. PEARLSON: Objection.

15 Asked and answered.

16 A. I don't think taking a  
17 recording changes whether or not someone is  
18 speaking the truth on that conversation.

19 MR. SACK: Why don't we take a  
20 break.

21 VIDEOGRAPHER: Off the record,  
22 4:53.

23 (Whereupon, a short break was  
24 taken at this time.)

25 VIDEOGRAPHER: On the record,

1

2 5:11.

3 Q. Mr. Salerno, I'm showing you a  
4 list of Cypress Holdings, III, L.P.,  
5 limited partners, that you produced in this  
6 case. It's Salerno Exhibit 25, and the  
7 Bates numbers are Cypress 1614 to 1616.

8 I'm going to go through these  
9 limited partners with you and ask a series  
10 of questions.

11 What's the Elizabeth R Walsh  
12 2016 irrevocable trust?

13 A. It's an irrevocable trust.

14 Q. And who is Elizabeth R Walsh?

15 A. My cousin.

16 Q. And what's your relationship  
17 with this trust? Do you manage it? Do you  
18 have any particular relationship with the  
19 trust?

20 A. This is a part of my family's  
21 estate plan. I'm the trustee.

22 Q. Are you the only trustee?

23 A. Yes, I am.

24 Q. Who are the beneficiaries?

25 A. My nephew.

1

2 Q. She's your first cousin?

3 A. Second cousin. Second or third

4 cousin.

5 Q. And you managed the funds in

6 the trust?

7 A. I do.

8 Q. And Ice Holdings, LLC, that's

9 the company we previously discussed in

10 connection with your form ADV filings, is

11 that right?

12 A. Yes, that's correct.

13 Q. Tiffany Salerno with Eagan in

14 parentheses, that's your wife?

15 A. It is.

16 Q. What's number 5, Millennium

17 Trust Company, LLC, custodian, FBO Merrick

18 Construction, 401K?

19 A. It's the custodian account for

20 Mr. Tim Cross through his 401K plan.

21 Q. And what's your relationship

22 with Tim Cross?

23 A. He's a friend.

24 Q. And is he a client of your

25 firm?

1

2 A. He is not.

3 Q. Is his company a client of your  
4 firm?

5 A. His company is.

6 Q. So that's Merrick Construction  
7 is a client of NPPG plan professionals?

8 A. No.

9 Q. What's it a client of?

10 A. NPPG.

11 Q. What services does NPPG provide  
12 for Merrick Construction?

13 A. TPA and compliance.

14 Q. What does TPA stand for?

15 A. Third-party administration.

16 Q. Does NPPG manage the funds in  
17 the 401K plan?

18 A. I don't think NPPG manages the  
19 funds in his 401K plan.

20 Q. So how did it come to be that  
21 Merrick Construction 401K was invested in  
22 Cypress?

23 A. NPPG Investment Services may  
24 manage some 401K plans for Merrick, for the  
25 record, but I'm not sure a hundred percent.



1

2 MR. PEARLSON: I'm going to ask  
3 you to keep your voice up.

4 THE WITNESS: I'm sorry.

5 A. When Tim Cross invested in  
6 previous Cypresses, at one point he asked  
7 if he could use his 401K dollars to do  
8 that. I don't recall if he did that, if  
9 this is the first time he did that or not,  
10 but that's him.

11 Q. There were prior Cypresses?

12 A. Yes.

13 Q. Cypress I and Cypress II?

14 A. Yes.

15 Q. Were those limited  
16 partnerships, as well?

17 A. I don't recall.

18 Q. Were you managing those?

19 A. Yes.

20 Q. And who were the investors in  
21 those?

22 A. Mostly the same people here.

23 Q. When did they exist?

24 A. "They" meaning who? I'm sorry.

25 Q. When did Cypress I and II

1

2 exist?

3 A. Cypress I, somewhere around --  
4 somewhere 2003, 2004, 2005, 2006, somewhere  
5 around that, 2007 maybe, before the crash.

6 Q. Excuse me?

7 A. Before the crash.

8 Q. And how about Cypress II?

9 A. Cypress II was after the crash.

10 Q. And Mr. Cross was invested in  
11 Cypress I and II?

12 A. I believe so, yes.

13 Q. And is it accurate to say that  
14 Mr. Cross invested individually in Cypress  
15 III and his 401K invested in Cypress III?

16 A. No.

17 Q. What's inaccurate about what I  
18 said?

19 A. The number five here,  
20 Millennium Trust, custodian FBO Merrick  
21 Construction 401K XXX 47461 is Mr. Cross's  
22 personal account in the 401K plan.

23 Q. So it would be fair to say that  
24 Mr. Cross invested in Cypress III and  
25 Mr. Cross's personal 401K account invested

1

2 in Cypress III?

3 A. Yes.

4 Q. And did you discuss with  
5 Mr. Cross investing his personal 401K  
6 account in Sport-BLX?

7 A. No.

8 Q. Why not?

9 A. I have full discretion over  
10 Cypress.

11 Q. And was that a suitable  
12 investment for a 401K account?

13 A. For Mr. Cross, yes, I believe  
14 so.

15 Q. Do you have investment  
16 guidelines for Mr. Cross's 401K account?

17 A. I don't know. Probably -- I  
18 don't know.

19 Q. Okay. You said earlier that it  
20 might be a suitable -- a high risk start up  
21 might be a suitable investment depending on  
22 the investment guidelines. So you're  
23 saying -- do you have investment guidelines  
24 for Mr. Cross's 401K account?

25 A. You're asking two different

1

2 questions.

3 Q. Do you have investment  
4 guidelines for Mr. Cross's 401K account?

5 A. For Mr. Cross's 401K account,  
6 no.

7 Q. You don't. For Mr. Cross, do  
8 you have investment guidelines?

9 A. No.

10 Q. Do you have investment  
11 guidelines for the entity listed at number  
12 five on this list?

13 A. Yes.

14 Q. You do. Well, I asked --  
15 number five refers to Merrick -- a Merrick  
16 Construction 401K account, correct?

17 A. Merrick Construction 401K, we  
18 have guidelines for. Merrick -- Tim Cross  
19 is different than Merrick Construction  
20 401K.

21 Q. But who is referred to in  
22 number five, a 401K account for everyone at  
23 Merrick Construction or just for Mr. Cross?

24 A. This is just for Mr. Cross.

25 Q. So you have investment

1

2 guidelines for the Merrick 401K account,  
3 but not for Mr. Cross's specific 401K  
4 account, is that what you're saying?

5 A. No.

6 Q. Explain. You're -- you earlier  
7 corrected me when I talked about the  
8 Merrick Construction 401K, you said that  
9 refers to Mr. Cross's specific 401K  
10 account, correct?

11 A. This particular dollars do,  
12 yes.

13 Q. Okay. These dollars, were they  
14 invested pursuant to investment guidelines?

15 A. Investment guidelines --  
16 Merrick Construction 401K is a retirement  
17 plan. A retirement plan has an investment  
18 policy statement. An individual does not  
19 have an investment policy statement.

20 Q. So what you're saying is this  
21 investment on behalf of Mr. Cross's 401K  
22 account was pursuant to the Merrick  
23 Construction's 401K investment policy  
24 statement?

25 A. No. The contrary. This

1

2 investment is made by Mr. Cross and  
3 Mr. Cross's decision to invest his personal  
4 dollars that he's holding through his 401K.

5 Q. He made this decision, correct?

6 A. Correct.

7 Q. And what information did you  
8 give him for him to make that decision?

9 A. Which decision?

10 Q. To invest his dollars in  
11 Cypress III?

12 A. I gave him an executive  
13 summary.

14 Q. Of what?

15 A. A description of what Cypress  
16 III would invest in.

17 Q. What's -- I'm sorry. What's an  
18 executive summary in this context, please?

19 A. I believe it was a two-page  
20 document summarizing the type of  
21 investments that I would be investing money  
22 in.

23 Q. And what did you say in that  
24 page, in that two-page document?

25 A. I don't recall exactly. We can

1

2 get a copy of it.

3 Q. Well, it hasn't been produced.

4 MR. SACK: Has it been  
5 produced, Ross, this two-page  
6 document?

7 THE WITNESS: It has.

8 MR. PEARLSON: I'm not sure.

9 As I sit here right now, I can't tell  
10 you.

11 Q. How did you send it to  
12 Mr. Cross?

13 A. Tim, it would either have been  
14 he picked it up or e-mail, one or the  
15 other.

16 Q. Did you e-mail with the LPs of  
17 Cypress Holdings?

18 A. At what period of time?

19 Q. Since the beginning of Cypress  
20 Holdings in 2018, have you e-mailed with  
21 the limited partners about the activities  
22 of Cypress III?

23 A. No.

24 Q. At any time have you e-mailed  
25 with the limited partners of Cypress III

1

2 about Cypress III?

3 A. Not outside of giving them  
4 annual accounting, K-1s.

5 Q. I didn't ask about outside of  
6 anything. I'm saying did you e-mail with  
7 them -- did you e-mail with the limited  
8 partners of Cypress Holdings III?

9 A. With regard to Cypress Holdings  
10 activities, no.

11 Q. How did you communicate with  
12 the limited partners of Cypress Holdings  
13 III?

14 A. I'm sorry. Regarding what?

15 Q. Regarding the activities of  
16 Cypress Holdings III. How did you  
17 communicate with them?

18 A. That's what I'm telling you. I  
19 don't.

20 Q. Do you send them annual reports  
21 about the activities and investments in  
22 Cypress III?

23 A. No.

24 Q. Aren't you obligated to do that  
25 under your partnership agreement?



1

2 A. I don't believe so.

3 Q. You're sure?

4 A. Again, I'm not sure. None of  
5 these seven friends of mine have ever  
6 questioned how I run Cypress III or asked  
7 for information that we did not give them.

8 Q. What did you give them -- what  
9 did you say in this executive summary  
10 document you referred to about Sport-BLX?

11 A. Nothing. The executive summary  
12 was provided when -- prior to them  
13 investing in Cypress III.

14 Q. So what did you say to them  
15 about -- did you talk about any specific  
16 investments in Cypress III that you  
17 contemplated?

18 A. Specifics, no.

19 Q. Any generalities about what you  
20 contemplated investing in?

21 A. Yes.

22 Q. What were the generalities?

23 A. Real estate, tax liens, I think  
24 he even said private placements, maybe  
25 startups, things of that nature.

1

2 Paraphrasing, not to hold me to the exact  
3 wording.

4 Q. Did you tell Mr. Cross that you  
5 were planning to do an investment in a real  
6 estate in Asbury Park?

7 A. What context?

8 Q. In connection with Cypress III?

9 A. No. Cypress II did Asbury Park.

10 Q. What does Cypress III hold now,  
11 what assets?

12 A. Cash, real estate, private  
13 companies, public companies.

14 Q. What private companies does it  
15 hold?

16 A. Sport-BLX, a Canadian gaming  
17 company. I don't recall the rest of them.

18 Q. What real estate does it hold?

19 A. Real estate project in Long  
20 Branch.

21 Q. What's the present valuation of  
22 Sport-BLX within your portfolio?

23 A. I don't know. I don't recall.

24 Q. Have you written any of it down  
25 below the one million dollar cost?

1

2           A.       I don't recall. I would have  
3 to look at the accounting.

4           Q.       Number 7 lists Millennium Trust  
5 Company, LLC, custodian FBO Marsden Medical  
6 Defined Benefit Plan. What's that?

7           A.       That is a custodian account for  
8 the Marsden Medical Defined Benefit Plan,  
9 yes.

10          Q.       And what's you or your  
11 company's relationship with Marsden  
12 Medical?

13          A.       We are the TPA, third-party  
14 administrator. We handle compliance work.  
15 I think that's it.

16          Q.       And who did you deal with there  
17 to get their investment in Cypress III?

18          A.       Dr. Marsden.

19          Q.       What's your relationship with  
20 Dr. Marsden?

21          A.       Just a friend. An  
22 acquaintance.

23          Q.       Is it a friend or an  
24 acquaintance?

25          A.       I would consider him a friend.

1

2 Q. Who's Sam Christopher?

3 A. Sam is an individual I know for  
4 many years. He's family. He's like  
5 family.

6 Q. Does he work for you?

7 A. He does.

8 Q. And you also have an investment  
9 from his -- from an IRA account for him?

10 A. Yes.

11 Q. And have you spoken with him  
12 about this investment in Sport-BLX?

13 A. No.

14 Q. And do you provide -- did you  
15 provide Sam or any of these other LPs any  
16 updates on the Sport-BLX investment at all?

17 A. No.

18 Q. Did you talk to them before you  
19 filed a lawsuit?

20 A. No.

21 Q. Did you use Cypress funds to  
22 fund the lawsuit?

23 A. Yes.

24 Q. You didn't tell them that you  
25 were using their money to litigate the

1

2 case?

3 A. No.

4 Q. Is that right?

5 A. Not their money, it's Cypress's  
6 money they invested in.

7 Q. Yeah, partly their money,  
8 correct?

9 A. They have interest in it, yes.

10 Q. They have, in fact, the  
11 majority interest in it, correct? As of  
12 2022, your interest and your wife's  
13 interest went down to about 25 percent,  
14 isn't that right?

15 A. I don't know. I would have to  
16 look at the numbers.

17 Q. But well below half?

18 A. It doesn't sound right, but...

19 Q. But below half, correct?

20 A. That sounds right.

21 Q. So you were mostly using your  
22 limited partner's money to fund the  
23 litigation, correct?

24 A. In the context of Cypress's  
25 money and their investment in it, yes.

1

2 Q. And have you told them that you  
3 and Cypress have been sued in a countersuit  
4 for fraud and securities fraud and related  
5 violations of law?

6 A. No, I did not.

7 Q. And have you told them that  
8 you're using, to a large extent, their  
9 money to fund your defense of that  
10 litigation?

11 A. No.

12 Q. In no time did you think it was  
13 relevant for them to know that their money  
14 was being used to fight a litigation that  
15 you started and where you and Cypress have  
16 been sued in a countersuit?

17 A. I don't believe that the money  
18 is being used to defend me, as much as  
19 prosecute their bad acts.

20 Q. But it is being used to defend  
21 you, isn't that right, Mr. Salerno?

22 A. I don't agree with that.

23 Q. You don't agree that it's being  
24 used to defend the litigation against you?

25 A. I, again, in my opinion, I

1

2 believe that the money for Cypress is being  
3 used for legal fees to prosecute their bad  
4 acts.

5 Q. You saw no reason to tell your  
6 investors you're using their money for your  
7 litigations?

8 MR. PEARLSON: Objection to  
9 form.

10 A. These aren't my litigations.  
11 These are Cypress's litigations.

12 Q. But you make all the decisions,  
13 correct, Mr. Salerno?

14 A. I do.

15 Q. Without any accountability to  
16 anyone, correct?

17 MR. PEARLSON: Objection to  
18 form.

19 A. I don't understand the  
20 question.

21 Q. You solely make decisions,  
22 correct, with regard to litigation and  
23 every decision Cypress makes, is that  
24 correct?

25 A. Yes.

1

2 Q. Do you consult anyone, anyone,  
3 any one of the limited partners about  
4 decisions for Cypress?

5 A. No.

6 Q. So these are your acts and your  
7 decisions, correct, so far as Cypress is  
8 acting?

9 A. These are the acts of Cypress.  
10 Me on behalf of Cypress.

11 Q. Without any consultation  
12 whatsoever with people whose money is at  
13 stake, correct?

14 MR. PEARLSON: Objection.

15 Asked and answered.

16 You can still answer. You can  
17 answer it again.

18 A. I'm sorry. What was the  
19 question again?

20 (Whereupon, a portion of the  
21 testimony was read back.)

22 A. I make the decisions on behalf  
23 of Cypress.

24 Q. Have you told any of the  
25 limited partners that the countersuit



1  
2 against Cypress and you is seeking a  
3 judgment that may be very much larger than  
4 the million dollar investment?

5 A. I have not spoken to them about  
6 it.

7 Q. Don't you think that would be  
8 important for the limited partners to know?

9 A. Not based upon the frauds that  
10 they made.

11 Q. No, no. My question is, is it  
12 true, Mr. Salerno, that Cypress and you  
13 have been sued for an amount of money that  
14 may exceed the one million dollar invested,  
15 is that accurate?

16 A. That's what the claims are,  
17 yes.

18 Q. Don't you think it's relevant  
19 -- do you think it's relevant for the  
20 limited partners to know that there could  
21 be a judgment against them greatly in  
22 excess of a million dollars?

23 A. I'm sorry. I don't believe  
24 that to be accurate.

25 Q. I didn't say there would be a

1  
2 judgment. I said there could be a judgment  
3 against Cypress and you for greater than a  
4 million dollars. You don't think that  
5 could happen?

6 MR. PEARLSON: I'm going to  
7 object to the relevance and to the  
8 speculation.

9 Go ahead.

10 A. You said that -- asked me if I  
11 thought it was relevant to speak to them  
12 about a potential judgment against them,  
13 and I don't think that's possible.

14 Q. You think it's impossible for  
15 there to be a potential judgment against --  
16 well, withdrawn.

17 When you say "against them," do  
18 you mean them individually?

19 A. That's what you said.

20 Q. Okay. Do you think there could  
21 be a potential judgment against Cypress?

22 MR. PEARLSON: Objection.

23 Again, you can answer it.

24 A. No. I don't see how the law  
25 could ever see that as to occur, no.

1

2 Q. You know there can't be a  
3 judgment against Cypress?

4 A. Based upon the facts, I don't  
5 see that happening.

6 Q. And you believe that's your  
7 decision to make and not to let the limited  
8 partners know that they do face that risk?

9 MR. PEARLSON: Objection.

10 Asked and answered.

11 A. Again, they don't face that  
12 risk, Cypress does.

13 Q. And their money invested in  
14 Cypress is at risk for that reason,  
15 correct?

16 A. Cypress's assets are involved  
17 in the lawsuit, if there was a judgment,  
18 which I don't believe will occur.

19 Q. Who is Jeffrey Kuc?

20 A. He's another friend.

21 Q. And you invest money for his  
22 IRA?

23 A. No.

24 Q. Well, you invest it through  
25 Cypress III, don't you? Look at number 10.

1

2 You invest his -- Jeffery Kuc IRA money in  
3 Cypress III, correct?

4 A. No. I invested this particular  
5 portion. I do not manage his accounts.

6 Q. I didn't ask you whether you  
7 manage them. I said did you invest money  
8 for his 401K. You're saying you do to the  
9 extent it's in Cypress III, correct?

10 A. No. It's not a 401K.

11 Q. Excuse me. Jeffery Kuc IRA,  
12 you invest a portion of his IRA money  
13 through Cypress III, correct?

14 A. I invest a portion of this  
15 particular IRA through Cypress III.

16 Q. And you invest money for the  
17 Kuc Korp LLC?

18 A. Yes, they're an investor.

19 Q. What is that?

20 A. It's a limited liability  
21 corporation.

22 Q. Who are the members of that?

23 A. I believe it's just Jeff.

24 Q. But you don't know?

25 A. I don't know if there's any

1

2 others. I know it is Jeff.

3 Q. You have a limited partner  
4 here, Aspire Capital Finance, LLC. What's  
5 that?

6 A. That's a limited liability  
7 corporation.

8 Q. Who are the members of that?

9 A. I believe it's just John  
10 Harris.

11 Q. You don't know, though, there  
12 may be other members?

13 A. There could be. I don't think  
14 so. I think it's just John.

15 Q. What's your relationship with  
16 John Harris?

17 A. He's another friend.

18 Q. Now, there are a number of  
19 limited partner interests associated with  
20 Dennis Nathan, would you agree with that?

21 A. Yes, there's more than one.

22 Q. Who is Dennis Nathan?

23 A. He's a friend and client.

24 Q. A client in what respect? Just  
25 explain that.

1

2 A. Actually, no, I'm sorry.

3 Dennis Nathan is not a client. His company

4 is a client. We handle their employee

5 benefits and 401K plan compliance.

6 Q. What's your relationship with

7 him?

8 A. I consider him a friend.

9 Q. How long have you known him?

10 A. I think we started doing

11 business in 2001 maybe, 2002. 2000

12 somewhere. Somewhere around 2000, give or

13 take.

14 Q. How did you learn that he's a

15 felon?

16 A. Through this lawsuit.

17 Q. Did you speak -- did you do KYC

18 on Mr. Nathan as a client or his company

19 for your firm?

20 A. I've known Mr. Nathan, Dennis,

21 for some 20 years. I've been associated

22 with numerous broker dealers. At one time

23 even managed some of his personal money.

24 All the broker dealers through the years

25 had information that when we opened up the

1

2 account, they did the know-your-client  
3 review. Never once did any objection,  
4 question, or any inquiry or comment about  
5 him having this felon background come up.

6 Q. Have you spoken with him since  
7 you learned about this, his felony record?

8 A. Yes.

9 Q. Did you speak about this case?

10 A. With counsel.

11 Q. Who was there at the meeting?

12 A. There was no meeting.

13 Q. Who was there during the  
14 conversation?

15 A. Dan, myself, and Dennis.

16 Q. Tell us what was said.

17 MR. SACK: Do you represent  
18 Dennis Nathan?

19 MR. PEARLSON: No.

20 Q. Tell us what was said during  
21 the conversation?

22 A. Dan asked if --

23 THE WITNESS: Actually, I think  
24 Ross, you were on the call, too --

25 A. -- asked if Dennis knew about

1

2 Sport-BLX. He said no. Then they asked  
3 him about his felony. If I recall  
4 correctly, Dennis said it had something to  
5 do with him selling his products and trade.

6 Q. Did you talk about what was --  
7 anything more about the litigation?

8 A. Which? The felony litigation  
9 or --

10 Q. No. The litigations that bring  
11 us here today.

12 A. No.

13 Q. Mr. Nathan didn't ask anything  
14 about that?

15 A. No.

16 Q. And you didn't tell him?

17 A. No.

18 Q. Have you spoken with Mr. Nathan  
19 about a possible deposition in this case?

20 A. No.

21 Q. Did you speak with him about  
22 efforts to serve him with a Subpoena?

23 A. No.

24 Q. Are you aware of any efforts  
25 that have been undertaken to serve him with



1

2 a Subpoena?

3 A. I understand that you're going  
4 to be deposing him.

5 Q. Where is he located now?

6 A. I don't know.

7 Q. Where does he live?

8 A. I'm not sure.

9 Q. The address here is 89 Leuning  
10 Street in South Hackensack, New Jersey.  
11 That's a place of employment, I take it?

12 A. That's his business, yes. I  
13 would assume he still lives in New Jersey.  
14 But he travels a lot, so that's why I'm not  
15 sure.

16 Q. There's an address for numbers  
17 -- associated with a family trust of 7  
18 Charlden Drive, Saddle River. Is that his  
19 home?

20 A. I don't know.

21 Q. Does he go to his business to  
22 work there?

23 A. I would assume, yes. When I  
24 meet with him, it's at his place of  
25 business.

1

2 Q. What's the Brinker-Cohen family  
3 trust?

4 A. It's a trust.

5 Q. Who are the trustees?

6 A. On the Brinker-Cohen -- I'm not  
7 sure, I think Dennis is the trustee of the  
8 Brinker-Cohen trust.

9 Q. Dennis Nathan?

10 A. Yes.

11 Q. And who are the beneficiaries?

12 A. I don't know.

13 Q. What's the relationship between  
14 Brinker-Cohen and Nathan?

15 A. I'm sorry?

16 Q. What's the relationship between  
17 Allen Cohen and Dennis Nathan?

18 A. They're brothers.

19 Q. They work together, as well?

20 A. They do.

21 Q. And what's MJR Cypress number  
22 19?

23 A. That's a limited liability  
24 corporation.

25 Q. Who are the members?

1

2 A. Dave Roth.

3 Q. That's your accountant?

4 A. Yes.

5 Q. And that's Cypress's

6 accountant?

7 A. Yes.

8 Q. What work does he do for

9 Cypress?

10 A. Tax filing.

11 Q. Does he provide K-1s to the

12 limited partners?

13 A. He does.

14 Q. Any other work?

15 A. General accounting.

16 Q. What does that involve here for

17 Cypress?

18 A. I don't know. That's his --

19 that's what he does. He does the tax

20 return at year end.

21 Q. Have you spoken with him about

22 his deposition?

23 A. Yes.

24 Q. Tell us about -- when was that?

25 A. A week or two ago. Maybe three

1

2 weeks ago. Maybe a month ago.

3 Q. Tell us what you remember about  
4 the conversation?

5 A. I told him that I was pretty  
6 sure you guys were going to depose him.

7 Q. Did you talk about the case or  
8 the issues in the case?

9 A. No. He simply said, they can  
10 ask me whatever they want, I don't know  
11 anything about it other than doing tax  
12 returns at year end.

13 Q. Did any of the limited partners  
14 ever convey to you --

15 A. Can you give me a minute. Yes.  
16 I'm sorry.

17 Q. Did any of the limited partners  
18 convey to you that that they didn't want  
19 their names disclosed in connection with  
20 Sport-BLX or this litigation?

21 A. No.

22 Q. Did you have any agreement with  
23 them not to disclose their names?

24 A. No.

25 Q. So as far as they were

1

2 concerned, you could have disclosed their  
3 names in connection with the broker dealer  
4 application in August 2019?

5 MR. PEARLSON: Objection.

6 Go ahead, you can answer. I  
7 just objected.

8 A. I don't believe so. I don't  
9 believe that I would have been doing the  
10 right thing by disclosing their names as  
11 partners of Cypress.

12 Q. Okay.

13 MR. SACK: Hindy, could you  
14 please read my question back and  
15 let's see if Mr. Salerno can answer  
16 it.

17 (Whereupon, a portion of the  
18 testimony was read back.)

19 Q. The question was could you have  
20 done that?

21 A. Your question was -- that's not  
22 what your question was.

23 Q. The question was, as far as  
24 your limited partners were concerned, you,  
25 as general partner, could have disclosed

1

2 their names to Sport-BLX?

3 MR. PEARLSON: I'm going to

4 object to that.

5 Go ahead.

6 A. Did I have discretion to

7 disclose their name? I would think yes.

8 If you're -- your question was would they

9 have allowed it, and I'm paraphrasing. I

10 don't think I can make that determination.

11 Q. You didn't ask them, did you?

12 A. No.

13 Q. So you don't even know whether

14 -- what they would decide about whether to

15 disclose their names, correct?

16 A. I did not ask them that.

17 Q. You made the decision solely on

18 your own?

19 A. That's correct. Well, no. I

20 made the decision with speaking to counsel

21 with regard to whether or not it was really

22 necessary, as well. But at the end of the

23 day, it was my discretion as a Cypress III

24 manager.

25 MR. SACK: Let's show the

1

2           limited partnership agreement,  
3           please.

4           Q.       I'm going to show you a couple  
5 of portions of this limited partnership  
6 agreement. It's Exhibit 26, it's Cypress  
7 3118 through 3152. And I'm going to direct  
8 you to some specific places. So is this  
9 the limited partnership agreement between  
10 you and the limited partners of Cypress,  
11 Exhibit 26?

12           A.       It looks like it, yes.

13           Q.       Do you see that in section  
14 3.01, the general part of it says in the  
15 first line, "The general partner shall have  
16 the sole discretion of making investments  
17 on behalf of the partnership"?

18           A.       Yes.

19           Q.       And you see in 3.02, on the  
20 next page, "The general partner shall have  
21 the following powers on behalf of the  
22 partnership"?

23           A.       Yes, I see that section.

24           Q.       And then included in there,  
25 includes to make investments. And then in

1  
2 subparagraph J, to act for the partnership  
3 in all other matters?

4 A. I see that section.

5 Q. Do you see in section 303 B --  
6 B, which carries over to page 4, you  
7 actually have the authority to indemnify  
8 yourself for legal fees?

9 A. I don't see that. But if  
10 you're saying it's here. Where is it?

11 Q. It says, "The partnership  
12 shall, in the discretion of the general  
13 partner, advance" --

14 A. What page are you on?

15 Q. Page 4 of the document. It  
16 says -- it's in the middle of the paragraph  
17 of B. It says, "The partnership shall, in  
18 the discretion of the general partner,  
19 advance amounts and/or pay expenses as  
20 incurred in connection with the  
21 indemnification obligations herein."

22 In other words, you can  
23 indemnify yourself for fees and expenses  
24 under this partnership agreement, correct?

25 A. I don't see it yet, but okay.



1

2 Q. Do you have -- do you have to  
3 consult with anyone about any of the  
4 decisions you make as general partner?

5 A. Do I have to? No.

6 Q. Take a look at 1105 of this  
7 agreement, Mr. Salerno, bottom of page 15.  
8 It says, "Reports to partners. The  
9 partnership shall furnish to the partners  
10 annual unaudited reports of the performance  
11 of the partnership and the unaudited  
12 financial statements of the partnership  
13 prepared by the general partner within 90  
14 days of the end of each fiscal year, or as  
15 soon as practicable thereafter, using gap  
16 as a guideline." Do you do that?

17 A. I believe we satisfy this by  
18 giving them their K-1 and we would have to  
19 -- and the tax return.

20 Q. That's your personal opinion --  
21 what's the basis for that opinion,  
22 Mr. Salerno?

23 A. A tax return is a financial  
24 statement. It is the official financial  
25 statement of every entity, including a

1

2 partnership. And I think that that  
3 satisfies this section.

4 Q. But you don't send -- how do  
5 you send that to them? How do you send the  
6 materials you just referred to to them?

7 A. I don't send it to them.

8 Q. Mr. Roth does?

9 A. Yes.

10 Q. But you don't provide any  
11 statement of any kind annually or  
12 periodically to the limited partners about  
13 how their investments are doing?

14 A. That is correct.

15 Q. I'm showing you now Exhibit 27.  
16 It's entitled partnership resolution of  
17 Cypress Holdings, III, L.P.

18 What's this document,  
19 Mr. Salerno?

20 A. I'm not familiar with it.

21 Q. Your counsel produced it to us  
22 in the litigation and it has your  
23 signature, correct?

24 A. Yes. This is a partnership  
25 resolution for Cypress Holdings III.

1

2 Q. And so you're talking to  
3 yourself here, correct?

4 A. I'm sorry? I was answering  
5 your question.

6 Q. Yeah. No, no. It's a  
7 partnership resolution, meaning you're  
8 signing it as Michael Salerno, manager, and  
9 you're giving yourself the authority set  
10 forth in the resolution?

11 A. That's a legal determination.  
12 I don't know.

13 Q. Well, did you consult with  
14 anyone about this resolution?

15 A. Cypress's attorneys prepared it  
16 and suggested it to be appropriate.

17 Q. When?

18 MR. PEARLSON: I just want to,  
19 again, caution you, don't reveal what  
20 your attorneys told you. But go  
21 ahead.

22 A. I don't recall when this was  
23 signed.

24 Q. Okay. Let's go through what it  
25 says in the first paragraph. Who were the

1

2 attorneys who you consulted in regard to  
3 this exhibit?

4 A. This would -- well, I'm not --  
5 can I read this?

6 Q. Please. Go ahead.

7 A. Okay.

8 Q. Which attorneys did you consult  
9 with? I'm not asking for the substance of  
10 your consultation, but which attorneys did  
11 you consult with about this?

12 A. I don't recall. I don't  
13 actually recall signing this document.

14 Q. Okay. What attorneys have you  
15 used in regard to Cypress Holdings matters?

16 A. Giordano Halleran, Fox  
17 Rothschild, Wilentz and then, you know,  
18 Ross.

19 Q. Did you consult with  
20 Mr. Pearlson's firm in regard to this  
21 document, the preparation of this document?

22 A. I don't recall this document.

23 Q. Where is Ed Kole, what's his  
24 firm?

25 A. Wilentz.

1

2           Q.       Take a look at the second  
3 paragraph. "Be it further resolved that  
4 all of the actions of Michael Salerno in  
5 his capacity as manager of Cypress LLC, as  
6 general partner of Cypress L.P., taken in  
7 good faith from the inception of Cypress  
8 L.P. to the present are hereby ratified and  
9 affirmed by Cypress L.P."

10                   Do you have any recollection of  
11 seeking or needing some sort of  
12 ratification and affirmance of your  
13 actions?

14           A.       No.

15           Q.       Do you recall anyone suggesting  
16 that you hadn't acted in good faith?

17           A.       Absolutely not.

18           Q.       So what's the point of that  
19 paragraph, if you're signing it and  
20 ratifying and affirming your own actions?

21                   MR. PEARLSON: I just want to,  
22 again, counsel, you -- to the extent  
23 that you were doing it at the  
24 direction of counsel and the  
25 reasoning is going to reveal the

1

2 thoughts of your counsel, you're not  
3 going to disclose it, okay?

4 THE WITNESS: Sure.

5 A. I don't recall which one of my  
6 attorneys prepared this. So I would need  
7 to speak to them with respect to why it was  
8 prepared in the first place.

9 Q. You had complete discretion  
10 over everything that Cypress III did,  
11 correct?

12 A. Yes.

13 MR. PEARLSON: Asked and  
14 answered.

15 Q. You had complete discretion.  
16 And so you can't think of any reason why  
17 you signed a resolution ratifying and  
18 affirming your own acts?

19 MR. PEARLSON: Again, asked and  
20 answered.

21 A. Again, I would have to speak to  
22 whichever attorney prepared this and look  
23 into it.

24 Q. Okay. The first paragraph  
25 says, in the third line, that you, Michael

1  
2 Salerno, "is hereby authorized, empowered  
3 and directed for and on behalf of Cypress  
4 L.P. and in its name to act on behalf of  
5 Cypress L.P., and specifically, and without  
6 limitation, is authorized and directed to  
7 request such documents in connection with  
8 Cypress L.P.'s stockholder interest in  
9 Sport-BLX."

10 Does that refresh your  
11 recollection at all as to the origins of  
12 this document?

13 A. No.

14 Q. Were you, separate and apart  
15 from this resolution, authorized,  
16 empowered, and directed for and on behalf  
17 of Cypress L.P. in its name and on its  
18 behalf to request documents in connection  
19 with the investment in Sport-BLX?

20 MR. PEARLSON: Objection.

21 Calls for a legal conclusion.

22 MR. SACK: No, it doesn't.

23 Q. This is your partnership  
24 agreement. You signed it. Doesn't this  
25 partnership agreement give you the very

1  
2 authority that's referred to in the first  
3 paragraph?

4 A. In my layman opinion, I would  
5 think so.

6 Q. So you have no idea why this  
7 resolution was prepared or why you signed  
8 it?

9 MR. PEARLSON: Again, why don't  
10 you ask him one more time, maybe  
11 you'll get a different answer.

12 A. No. I don't recall who  
13 prepared this or why.

14 MR. SACK: Let's take a  
15 five-minute break and see if we want  
16 to do anything more today.

17 VIDEOGRAPHER: Off the record,  
18 6:00.

19 (Whereupon, a short break was  
20 taken at this time.)

21 VIDEOGRAPHER: On the record,  
22 6:09.

23 Q. Mr. Salerno, you recently  
24 referred -- just a few moments ago referred  
25 to a real estate investment that you're



1

2 involved with in Red Bank, New Jersey?

3 A. No.

4 Q. Long Branch, excuse me.

5 A. Yes.

6 Q. Long Branch, New Jersey?

7 A. Yes.

8 Q. When did you begin that  
9 investment?

10 A. 2019.

11 Q. And do you have partners in  
12 that investment?

13 A. I do.

14 Q. Are any of them the Cypress  
15 limited partners that I've been asking you  
16 questions about?

17 A. No. You're asking if any of  
18 the limited partners that are in Cypress  
19 are also involved in the real estate  
20 separately?

21 Q. Correct.

22 A. There are none.

23 Q. And how about any of the 401K  
24 or benefit plans or LLCs, not just  
25 individually, but any of these entities

1

2 that are Cypress limited partners, are they  
3 involved in the Long Branch real estate  
4 project? We can pull out that list again  
5 if you want to check.

6 A. My only -- Ice Holdings has a  
7 position in it, as well. But I consider  
8 that meaning me.

9 Q. And your wife, is she invested  
10 in this Long Branch project, as well?

11 A. I don't think so, no. I don't  
12 think she's in that one.

13 Q. Are you also involved in a Red  
14 Bank development, as well?

15 A. Me, yes. Me.

16 Q. You, personally, or one of the  
17 entities you control?

18 A. One of the entities I control.

19 Q. And are any of the Cypress III  
20 limited partners involved in the Red Bank  
21 real estate project?

22 A. Only Ice. Again, none of the  
23 -- no one outside of me.

24 MR. SACK: I think we're  
25 finished for today.

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2

MR. PEARLSON: Can we have the  
time check?

4

VIDEOGRAPHER: Would you like  
to go off the record, first?

6

MR. SACK: Yes, please.

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VIDEOGRAPHER: Off the record,  
6:12.

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D E C L A R A T I O N

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I hereby certify that having been  
first duly sworn to testify to the truth, I  
gave the above testimony.

7

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14

I FURTHER CERTIFY that the foregoing  
transcript is a true and correct transcript  
of the testimony given by me at the time  
and place specified hereinbefore.

15

16

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Subscribed and sworn to before me  
this \_\_\_\_ day of \_\_\_\_\_ 2023.

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HINDY FREILICH

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